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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

- - - - -X  
UNITED STATES OF AMERICA 19-CR-106(JLS)  
  
vs.  
  
JEFFREY RICHARDS, Buffalo, New York  
Defendant. January 27, 2020  
10:20 a.m.  
- - - - -X

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE MICHAEL J. ROEMER  
UNITED STATES MAGISTRATE JUDGE

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(Proceedings recorded by electronic sound recording,  
transcript produced by computer).

I N D E XWITNESS FOR THE GOVERNMENT

Thomas Weis

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P R O C E E D I N G S

\* \* \*

(WHEREUPON, the defendant is present).

**THE CLERK:** United States District Court for the Western District of New York is now in session, the Honorable Michael J. Roemer presiding.

We're here in the matter of U.S.A. vs. Jeffrey Richards, case No. 19-CR-106, for an evidentiary hearing.

Counsel, please state your name for the record.

**MR. CULLINANE:** Good morning, Your Honor. Brendan Cullinane and Charles Watkins on behalf of the United States.

**MR. STACHOWSKI:** Michael Stachowski on behalf of Mr. Richards.

**MAGISTRATE JUDGE ROEMER:** Good morning, counsel. We're here for an evidentiary hearing regarding, I think, the traffic stop, the arrest of the defendant and a search of the defendant's automobile?

**MR. CULLINANE:** That's correct, Your Honor. And I had an opportunity to speak with Mr. Stachowski last week and we agree that it's limited to the stop of the vehicle in which the defendant was in, and the recovery of the firearm at that point.

**MR. STACHOWSKI:** Right. And we -- we're looking at a separate hearing on the breadth of the search warrant.

**MAGISTRATE JUDGE ROEMER:** The breadth of the -- of

1 the house?

2 **MR. STACHOWSKI:** Yeah, of the house.

3 **MAGISTRATE JUDGE ROEMER:** Well, we can discuss that.  
4 I guess I don't see a need for a hearing on it.

5 **MR. STACHOWSKI:** Well, Judge, there's a search  
6 warrant and -- and the seized items that were in a safe, and  
7 the safe's not mentioned in the search warrant.

8 **MAGISTRATE JUDGE ROEMER:** Okay. Well, we can  
9 discuss that later.

10 Are you ready to start?

11 **MR. CULLINANE:** I am, Judge. Just one other issue  
12 in the spirit of suppression issues today. I have a bit of a  
13 cough and I don't want the Court to think I'm chewing gum  
14 here, but I have cough drops that I'm using to help prevent  
15 the cough.

16 **MAGISTRATE JUDGE ROEMER:** I will consider that.

17 **MR. CULLINANE:** Thank you, Judge. I appreciate  
18 that.

19 **MAGISTRATE JUDGE ROEMER:** All right, do you want to  
20 call your first witness?

21 **MR. CULLINANE:** Thank you, Judge. Yeah, the  
22 Government will call at this time FBI Special Agent Thomas  
23 Weis.

24 **GOVERNMENT'S WITNESS, THOMAS WEIS, SWORN**

25 **DIRECT EXAMINATION**

1                   **THE CLERK:** Have a seat. When seated, please state  
2 your name and spell it for the record. And also (inaudible).

3                   **THE WITNESS:** Thomas Weis, W-E-I-S.

4 **BY MR. CULLINANE:**

5 Q. Good morning.

6 A. Good morning, sir.

7 Q. Where are you currently employed?

8 A. I'm currently employed with the Federal Bureau of  
9 Investigation.

10 Q. What is your title?

11 A. Special agent.

12 Q. Agent Weis, how long have you been with the FBI?

13 A. I've been with the FBI since March of 2017.

14 Q. And in what city or cities have you been assigned to the  
15 FBI following your graduation from the FBI's training academy?

16 A. I've been assigned to Buffalo.

17 Q. So since March of 2017?

18 A. That's correct.

19 Q. All right. Prior to working as an FBI special agent,  
20 where did you work?

21 A. Prior to this I worked as a government contractor down in  
22 Virginia. Prior to that I was in the Secret Service. And  
23 prior to that I was nine years in the U.S. Army.

24 Q. Can you please describe the training you completed in  
25 order to become an FBI special agent?

1 A. It was a basic special agent course down in Quantico,  
2 Virginia, which is approximately six months, followed with a  
3 two year probationary time and on-the-job training here in  
4 Buffalo, New York.

5 Q. And generally what kind of training do you complete at the  
6 FBI's training academy?

7 A. Basic investigation training, firearms training, tactics,  
8 arrest procedures, anything along those lines.

9 Q. What are your current job responsibilities as a special  
10 agent here in Buffalo?

11 A. As a special agent here in Buffalo I've been assigned to  
12 the Safe Streets Gang Task Force currently where I conduct  
13 investigations into violent crime, violent gang and then  
14 drugs.

15 Q. When did you start working with the Safe Streets Task  
16 Force?

17 A. I was first assigned to Safe Streets Task Force in July of  
18 2017 when I came to Buffalo right out of the academy.

19 Q. Have you always worked with the Safe Streets Task Force?

20 A. No, sir. I -- after about a year and a half I was  
21 transferred to the Joint Terrorism Task Force here in FBI  
22 Buffalo.

23 Q. Approximately when was that?

24 A. That was approximately August of 2018.

25 Q. And were you reassigned back to the Safe Streets Task

1 Force?

2 A. I was.

3 Q. Generally what does the Joint Terrorism Task Force have  
4 responsibilities for?

5 A. The task force is involved here in the Buffalo area of  
6 responsibility for international and domestic terrorism.

7 Q. When you say "international" terrorism --

8 A. Yes.

9 Q. -- that would involve issues outside the United States  
10 that threaten the United States?

11 A. Yes, sir.

12 Q. What would domestic terrorism consist of?

13 A. Domestic terrorism can consist of anything from home grown  
14 extremists, anything along the lines where it is -- there's no  
15 foreign influence.

16 Q. In your training and experience what are some of the  
17 behaviors or behavior that persons who are involved in  
18 domestic terrorism exhibit?

19 A. Typically there could be bomb making associated with --  
20 with the domestic terrorism, threats of violence with  
21 firearms. Then typically there's been narcotics trafficking  
22 as well.

23 Q. How about race-based issues?

24 A. Yes, sir.

25 Q. For example, what do you mean?

1 A. So specifically there could be white supremacists, could  
2 there be black separatists. It's pretty common for domestic  
3 terrorism.

4 Q. But those issues fall under the domestic terrorism area of  
5 concern for the FBI?

6 A. Yes, they do.

7 Q. All right. Now, you mentioned bomb making; is that  
8 correct?

9 A. I did.

10 Q. Have you received training regarding bomb making?

11 A. I have.

12 Q. All right. And what is your understanding of persons and  
13 how they're able to use bombs or detonate bombs?

14 A. So bombs could be detonated by different methods. One of  
15 them could just be a simple fuse that's lit. Another means  
16 for detonation could be remotely via cell phone, any type of  
17 blue -- bluetooth signal or radio signal.

18 Q. And generally can you explain for the Court what you mean  
19 by "remotely" using a cell phone or bluetooth?

20 A. A signal can be sent from the cell phone to the actual  
21 device and then it would cause the detonation.

22 Q. And is this something that you're familiar with that  
23 people manufacture?

24 A. It is.

25 Q. Now, are you also a member of the FBI's SWAT team?



1 A. I am.

2 Q. How long have you been a member of the SWAT team for?

3 A. Since April of 2019.

4 Q. All right. What is the SWAT team?

5 A. SWAT team is a group of special agents that receive  
6 further training who volunteered and it consists of -- well,  
7 the name actually is special weapons and tactics. So the job  
8 of SWAT trained officers is to respond and participate in  
9 arrests and search warrants that are typically deemed high  
10 risk to law enforcement.

11 Q. Okay. I have a couple questions following up on that.  
12 You said there's additional training that's required to be a  
13 member of the SWAT team?

14 A. Yes, sir.

15 Q. Can you please explain that?

16 A. Each operator in order to be certified and to actually  
17 conduct operations has to go through a three week basic course  
18 down in Quantico, Virginia. Followed up by that every month  
19 SWAT operators have to conduct training.

20 Q. What's the purpose of this additional training?

21 A. It's to keep all of our tactics up-to-date as well as  
22 being familiar with all of our weapons systems, with all of  
23 our special equipment.

24 Q. Now, you also mentioned the SWAT team is used in high-risk  
25 situations?

1 A. Yes, sir.

2 Q. Can you please explain that?

3 A. One example would be for gang members, typically with gang  
4 members there's violence associated, which would present a  
5 higher risk for law enforcement officers or agents when  
6 conducting the arrest or conducting a search warrant.

7 Q. And why is that?

8 A. Just because typically with gang members there could be --  
9 there's violence associated, criminal histories, any sort of  
10 violent tendencies that -- or in this case for bomb making,  
11 weapons, anything like that.

12 Q. What is your role as a SWAT team member?

13 A. My role is as an operator, it's to conduct the operation  
14 within -- with inside the -- wherever the arrest takes place  
15 so...

16 Q. And you joined the SWAT team again in 2019?

17 A. I did.

18 Q. Prior to that date were you familiar with the SWAT team?

19 A. I was.

20 Q. How so?

21 A. We used them for different arrests when I was on Safe  
22 Streets Task Force as well as on the Joint Terrorism Task  
23 Force.

24 Q. Now, what makes a person or a place -- and you can explain  
25 to the Court -- a high-risk target?

1 A. High risk could be a felon who has a violent history; it  
2 could be a person who is known to carry firearms; a person  
3 that's known to carry knives could be considered violent in  
4 certain nature; as well as bomb makers, anything along those  
5 lines.

6 Q. Does the person necessarily have to have a felony  
7 conviction in order to be high risk?

8 A. No, sir.

9 Q. Is there any sort of mandatory finding in order to make  
10 someone deemed a high risk?

11 A. Can you repeat the question, sir?

12 Q. Is there a certain mandatory or certain threshold issue or  
13 finding that makes someone a high risk?

14 A. Yes, sir.

15 Q. Or could it just be, Agent, a collection of factors about  
16 the person that makes them a high risk?

17 A. It could be a collection.

18 Q. Okay. So it doesn't have to be one thing or the other?

19 A. No.

20 Q. Okay. And I should be clearer when I asked that question,  
21 so thank you. Now, during the course of working in Buffalo as  
22 an FBI special agent, you've become familiar with gangs you  
23 said; is that correct?

24 A. That's correct.

25 Q. Have you become familiar with motorcycle clubs?

1 A. I have.

2 Q. In particular outlaw motorcycle clubs?

3 A. Yes.

4 Q. Which ones have you become familiar with?

5 A. With the Outlaw Motorcycle Club as well as the Kingsmen  
6 Motorcycle Club.

7 Q. How is it you became familiar with the Kingsmen Motorcycle  
8 Club?

9 A. I participated in some of the investigation for -- on Safe  
10 Streets for the Kingsmen Motorcycle Club in 2017.

11 Q. And what is your understanding of what occurred during  
12 that investigation or why the investigation occurred regarding  
13 the Kingsmen Motorcycle Club?

14 **MR. STACHOWSKI:** Well, Your Honor, I don't know that  
15 that's relevant to this proceeding because this gentleman  
16 didn't even join the Kingsmen until well after that whole  
17 thing --

18 **THE CLERK:** Mr. Stachowski, you need to speak into  
19 the microphone. Thank you.

20 **MR. STACHOWSKI:** I know. Until well after that  
21 investigation and indictment was completed.

22 **MAGISTRATE JUDGE ROEMER:** Mr. Cullinane?

23 **MR. CULLINANE:** Judge, I appreciate Mr. Stachowski's  
24 saying, but the fact is this defendant was known as a Kingsmen  
25 member even after-the-fact of this investigation and the

1 murders that were involved there. That information --

2 **MAGISTRATE JUDGE ROEMER:** What you're looking for  
3 now is just background?

4 **MR. CULLINANE:** That's correct.

5 **MAGISTRATE JUDGE ROEMER:** Correct?

6 **MR. CULLINANE:** That's correct.

7 **MAGISTRATE JUDGE ROEMER:** I'll overrule the  
8 objection. You can ask your question again.

9 **BY MR. CULLINANE:**

10 Q. If you can again, Agent, can you please state what your  
11 understanding is of why the investigation occurred regarding  
12 the Kingsmen Motorcycle Club?

13 A. It was my understanding that there was two individuals  
14 that were murdered by members of the Kingsmen Motorcycle Club.

15 Q. Is there any other information about the Kingsmen that you  
16 became aware of?

17 A. Yes, that they were involved with narcotics trafficking as  
18 well as other violent tendencies.

19 Q. Agent Weis, have you been involved in the execution and  
20 planning of search warrants?

21 A. I have.

22 Q. Approximately how many?

23 A. Approximately -- approximately 50.

24 Q. And as part of executing and planning of search warrants,  
25 do you work with other law enforcement officers?

1 A. Yes, I do.

2 Q. For what purpose?

3 A. For their training and their knowledge as well as to  
4 facilitate the actual arrest or search warrant, any type of  
5 special -- specialty that's needed, we consult with them and  
6 then we'll work together.

7 Q. Now, you mentioned any sort of specialty or specialties  
8 that are needed. What, for example, may that be?

9 A. So, for example, you could request a SWAT team, that would  
10 be one; also our bomb technicians that the FBI Buffalo here  
11 has.

12 Q. And generally can you describe how someone becomes a bomb  
13 technician?

14 A. After a certain amount of time as a special agent they're  
15 eligible to go through special training. Then I know -- I'm  
16 not sure of the exact specifics of it, but they have to  
17 maintain their certification I believe quarterly.

18 Q. Generally, though, it is a certification process and it  
19 becomes a specialty of an agent; is that correct?

20 A. That's correct.

21 Q. Okay. Are you certified as a bomb technician?

22 A. I am not.

23 Q. Are there others, though, in this office who are?

24 A. Yes, there is.

25 Q. And who were in December of 2018?

1 A. That's correct.

2 Q. Now, you stated that you could call upon persons with a  
3 specialty such as being a bomb technician. Is there also  
4 special equipment that these individuals can employ at the  
5 time when needed?

6 A. Yes, sir.

7 Q. What kind of equipment?

8 A. There's robots that are available; it lessens the risk to  
9 the actual special agent or to other individuals that could be  
10 in the area.

11 Q. And, generally speaking, how does the robot operate for  
12 bomb technicians?

13 A. The robot has an arm and a camera system and can  
14 essentially move up to the suspected device and manipulate it  
15 as needed.

16 Q. Now, are bomb technicians and bomb robots used during the  
17 course of every search warrant?

18 A. No.

19 Q. How and when would they be used?

20 A. Only if there is a potential threat for one via source  
21 reporting or known history.

22 Q. Now, what other sort of factors come into play when  
23 executing a search warrant at a residence?

24 A. Individuals that could be in the residence itself, whether  
25 it's family, whether it's -- if it's an apartment, connecting

1 apartments, as well as --

2 **MR. STACHOWSKI:** Your Honor, Your Honor, I'm going  
3 to have to object again because now we're going into the  
4 search warrant and we're here for the car theft.

5 **MAGISTRATE JUDGE ROEMER:** Mr. Cullinane?

6 **MR. CULLINANE:** Well, Your Honor, this information  
7 is important because it demonstrates for law enforcement  
8 purposes what information they needed to know at the time they  
9 arrested Mr. Richards in order to become safe and remain safe  
10 at that time.

11 **MAGISTRATE JUDGE ROEMER:** I believe it's the  
12 Government's position, is it not, Mr. Cullinane, that this  
13 search was the impetus for the traffic stop and the ultimate  
14 arrest of the defendant?

15 **MR. CULLINANE:** That's correct.

16 **MR. STACHOWSKI:** And, Judge, I think chronologically  
17 they arrested -- they did the traffic stop before they  
18 executed the search warrant.

19 **MR. CULLINANE:** That is true. And I don't want to  
20 take the words out of Agent Weis' mouth, but I think what  
21 we'll hear is that because of safety concerns regarding the  
22 residence and the defendant, the FBI wanted to put in custody  
23 Mr. Richards first before executing the search warrant at the  
24 residence.

25 **MAGISTRATE JUDGE ROEMER:** Okay, overruled.



1 **BY MR. CULLINANE:**

2 Q. Agent Weis, if you could please continue talking about the  
3 factors that come into play regarding the execution of a  
4 search warrant at a residence?

5 A. As I stated before, anybody that could be in the  
6 apartments or in the residence; any neighbors could be a  
7 factor depending on how close it is; there's also other  
8 factors as well -- if the person has any type of weapons that  
9 are known or suspected; and if the individual's in the  
10 residence; time of day is considered; and the pattern of life  
11 of the targeted individual.

12 Q. Agent, how about whether or not law enforcement has  
13 information about the presence of drugs?

14 A. That's correct.

15 Q. How can that come into play?

16 A. Because typically with drug houses there are guns there  
17 and as well as the actual drug itself could be considered a  
18 higher risk to law enforcement.

19 Q. Can you please explain that?

20 A. So specifically with fentanyl, there's been cases --  
21 there's series of trainings that are provided to law  
22 enforcement about the dangers of it for when it's airborne,  
23 how extreme small amounts of the opioid itself, whether it's  
24 on skin contact or if it's inhaled, could cause overdoses or  
25 seriously impair law enforcement.

1 Q. And, Agent, you've discussed this already, but how about  
2 the presence or at least the information regarding the  
3 presence of a bomb?

4 A. Yes.

5 Q. How does that become a factor?

6 A. Because immediately the thought is how is the device  
7 detonated and does the target actually have the device in his  
8 or her possession.

9 Q. All right. Agent, I'd like to direct your attention to  
10 the fall and winter of 2018. At that time were you working as  
11 a FBI special agent?

12 A. I was.

13 Q. And at that time did you become familiar with the person  
14 named Jeffrey Richards?

15 A. I was.

16 Q. How did you become familiar with Jeffrey Richards?

17 A. As a member of the Joint Terrorism Task Force I worked --  
18 I participated in the case for Mr. Richards. Our information  
19 that we had on him was that he was a white supremacist who was  
20 a member of the Kingsmen Motorcycle Club as well as a bomb  
21 maker.

22 Q. Was there other information that you had regarding  
23 Mr. Richards?

24 A. Yes. That he was a -- also a drug distributor.

25 Q. Okay. Was there also information regarding firearms?

1 A. Yes.

2 Q. What information did you learn about Mr. Richards and  
3 firearms?

4 A. We learned that he typically carries a pistol on his  
5 person whenever he leaves his house.

6 Q. Generally speaking, how did you learn this information?

7 A. Through multiple sources that we had as part of the  
8 investigation.

9 Q. Did you find out or make a determination of where  
10 Mr. Richards lived at that time?

11 A. Yes, we did.

12 Q. Where did he live?

13 A. He lived at 4 Packard Court, Apartment D up in Niagara  
14 Falls.

15 Q. And can you please describe that for the Court?

16 A. It's a -- an apartment complex, it's set up -- Apartment D  
17 was on one of the corners of the building. The building  
18 itself had two floors and then the apartments were joined.

19 Q. When you say "joined," was Mr. Richards' apartment  
20 connected to others?

21 A. There was a wall that separated, but the actual -- it was  
22 one building, though, with multiple apartments.

23 Q. Okay. His residence was not a stand alone?

24 A. No.

25 Q. Does that become a factor that comes into play for law

1 enforcement in executing a search warrant?

2 A. Yes, it does.

3 Q. How so?

4 A. So in this case if there was a blast radius in case the  
5 device actually detonated, that was a factor; or anyone else  
6 that could have been in the -- one of the joining apartments  
7 that could be holding either drugs or any other devices like  
8 that so...

9 Q. Even if there's a wall present there, does it still become  
10 a factor or an issue regarding gunfire?

11 A. Yes, it does.

12 Q. How so?

13 A. Bullets could typically go through walls depending on --  
14 depending on the thickness of it and depending on the actual  
15 round itself.

16 Q. Now, at some point in December of 2018, did law  
17 enforcement become familiar with this residence being used as  
18 a place for distribution of drugs?

19 A. Yes, sir.

20 Q. Can you please explain that for the Court?

21 A. So our source reporting stated that an associate of  
22 Mr. Richards, Jeffrey Maikranz -- excuse me, James Maikranz,  
23 would store drugs there as well as we had a pole camera, pole  
24 surveillance camera that was set up where we could actually  
25 observe the residence itself.

1 Q. Now, do you recall which date Mr. Richards was arrested  
2 on?

3 A. He was arrested on 14 December 2018.

4 Q. Okay. Close in time to that date was there actually a  
5 controlled buy that was conducted at Mr. Richards' address or  
6 residence was used?

7 A. Yes, sir.

8 Q. Can you please describe that for the Court?

9 A. Niagara Falls Police Department, their Narcotics Unit,  
10 conducted a controlled purchase for fentanyl into James  
11 Maikranz a few days before this.

12 Q. Now, during the course of that controlled buy from James  
13 Maikranz, did law enforcement learn information about the use  
14 of Mr. Richards' residence?

15 A. Yes, sir.

16 Q. What did they learn at that time?

17 A. Maikranz essentially told the -- the informant that was  
18 working -- that was the Niagara Falls informant, that he had  
19 to leave to go pick up his drugs which were stored at another  
20 location.

21 Q. What location was that?

22 A. It was at 4 Packard Court, Apartment D.

23 Q. Did law enforcement, in fact, observe Mr. Maikranz enter  
24 and leave that apartment?

25 A. Yes, we did.

1 Q. Following his departure from Mr. Richards' residence, did  
2 Mr. Maikranz --

3 **MR. STACHOWSKI:** Your Honor, I have to object  
4 because --

5 **MAGISTRATE JUDGE ROEMER:** He didn't even get the  
6 whole question out. Let me hear the whole question and then  
7 I'll hear you.

8 **BY MR. CULLINANE:**

9 Q. Following Mr. Maikranz's departure from that residence,  
10 did law enforcement come into possession of suspected  
11 controlled substances that they believed were in Mr. Richards'  
12 residence?

13 **MR. STACHOWSKI:** Your Honor, that's the problem,  
14 because if you listen to what he just said, he said he went to  
15 some place and before that he testified generally that people  
16 could have drugs stored in different apartments and that this  
17 is an apartment complex, 4 Packard Court, and that there are  
18 many residences in there.

19 So we -- this is a leap of faith that it was --  
20 from what he just testified that it's Mr. Richards' apartment.

21 **MAGISTRATE JUDGE ROEMER:** Mr. Cullinane?

22 **MR. CULLINANE:** Judge, I can clarify. I can ask  
23 some additional questions.

24 **MAGISTRATE JUDGE ROEMER:** Rephrase your question.

25 **MR. CULLINANE:** Yes. If I may, let me ask a

1 previous question and rephrase the question I asked, if that's  
2 okay?

3 **MAGISTRATE JUDGE ROEMER:** I'm sorry?

4 **MR. CULLINANE:** If I can, if I could ask an  
5 additional question, then rephrase the question I asked him?

6 **MAGISTRATE JUDGE ROEMER:** Sure, sure.

7 **BY MR. CULLINANE:**

8 Q. Mr. Weis, have you now been to the residence of  
9 Mr. Richards?

10 A. I have.

11 Q. If law enforcement is conducting surveillance from the  
12 street near Packard Court, can law enforcement see a person  
13 enter and exit Apartment D which is Mr. Richards' residence?

14 A. That's correct.

15 Q. Does that -- does Apartment D have a door that can be seen  
16 from the outside?

17 A. Yes, it does.

18 Q. And, therefore, is not within a building of many  
19 apartments?

20 A. Correct.

21 Q. So prior to December 14th, 2018, did law enforcement  
22 observe Mr. Maikranz directly enter Mr. Richards' residence  
23 and depart Mr. Richards' residence?

24 A. Yes, we did.

25 Q. And following that did law enforcement come into

1 possession of suspected controlled substances sold by Mr.  
2 Maikranz following his departure from Mr. Richards' apartment?

3 A. Yes, sir.

4 Q. Did law enforcement perform any tests on those drugs?

5 A. Yes, sir.

6 Q. What did law enforcement find as a result of their test of  
7 those drugs?

8 A. As a result of the test, the drugs tested positive for the  
9 presence of fentanyl.

10 Q. And you stated earlier that fentanyl is a dangerous drug?

11 A. It is.

12 Q. Now, you've talked about the fact that there's been  
13 fentanyl sold following someone's departure from Mr. Richards'  
14 residence; is that correct?

15 A. Yes.

16 Q. And additional information regarding Mr. Richards,  
17 correct?

18 A. Yes.

19 Q. What did you start to do with all this information you  
20 were gathering about Mr. Richards?

21 A. From this point we began to draft the affidavit for the  
22 search warrant for 4 Packard Court.

23 Q. Okay. And, generally speaking, what sort of items did you  
24 believe could be located at Mr. Richards' residence?

25 A. We believed that there was drugs there to include



1 fentanyl; we believed that there was firearms in the  
2 residence; and that there was potentially a explosive device.

3 Q. Now, you started to work on the draft of an affidavit; is  
4 that correct?

5 A. Yes, sir.

6 Q. Did law enforcement also conduct surveillance?

7 A. Yes, sir.

8 Q. How so?

9 A. Aside from the pole camera that was set up, agents and  
10 other task force officers, part of our task force deployed to  
11 that area and set up physical surveillance of the house.

12 Q. And what is the purpose of the physical surveillance of  
13 the house?

14 A. It was to see if Mr. Richards was inside the residence or  
15 if he was leaving.

16 Q. Why is that important?

17 A. It was important for us because we wanted to further  
18 establish a pattern of life; also to see if he was in the  
19 residence, which would have been a greater threat for the  
20 general public or for law enforcement if the -- if we were to  
21 execute the search warrant.

22 Q. And why would that have been a greater threat?

23 A. Because he could have had access to the firearms and to  
24 the explosive device.

25 Q. Now, are these the same types of concerns you have for

1 every search warrant?

2 A. This was greater due to the explosive device presence, but  
3 typically, yes, we do see -- we are concerned with firearms  
4 inside of a residence or anything else that could be harmful.

5 Q. Did his background also heighten law enforcement's  
6 concerns?

7 A. From source reporting, yes.

8 **MR. STACHOWSKI:** You know, Your Honor, I'm going to  
9 have to object again because we seem to jump and leave out big  
10 important paragraphs because he's talking about the presence  
11 of an explosive device, yet Mr. Maikranz's involvement in the  
12 confidential source only talks about Mr. Maikranz getting  
13 drugs from another place and that they have drugs in that  
14 place.

15 I didn't hear anything about an explosive device.

16 **MAGISTRATE JUDGE ROEMER:** To be honest with you,  
17 Mr. Cullinane, I had that same thought when that testimony was  
18 solicited. I assume they had some information there was an  
19 explosive device, but we seem to jump right to that there was  
20 an explosive device.

21 **MR. CULLINANE:** And I think Mr. Stachowski beat me  
22 to the punch. Let me ask some additional questions about  
23 explosive device and the reasons for the belief.

24 **BY MR. CULLINANE:**

25 Q. Agent Weis, you discussed the fact that there potentially

1 could have been a bomb or explosive device at Mr. Richards'  
2 residence; is that correct?

3 A. That's correct.

4 Q. What was the basis for law enforcement's belief on  
5 December 14th, 2018, that Mr. Richards was in possession of  
6 some sort of explosive device?

7 A. Multiple sources informed us, the FBI, that he was in  
8 possession of an explosive device.

9 Q. And you said this was multiple sources?

10 A. That's correct.

11 Q. Independent from each other?

12 A. Independent.

13 Q. And did these persons have a sense of -- strike that.

14 Did law enforcement deem these persons to be  
15 reliable?

16 A. Yes, sir.

17 Q. And based on generally what?

18 A. Generally based on corroboration, whether -- by any means  
19 that we would receive through the investigation.

20 Q. Now, on December 14th, 2018, did you present an  
21 application and affidavit to this Court for a search warrant  
22 for Mr. Richards' residence?

23 A. I did.

24 Q. Were you the affiant on that search warrant?

25 A. I was.

1 Q. And did the Court grant the search warrant?

2 A. Yes, he did.

3 **MR. CULLINANE:** Your Honor, permission to approach  
4 the witness?

5 **MAGISTRATE JUDGE ROEMER:** Sure.

6 **BY MR. CULLINANE:**

7 Q. I'm showing you -- I'm showing what's been marked as  
8 Government Exhibit No. 1. Are you familiar with this  
9 document?

10 A. I am.

11 Q. What is this?

12 A. This is the search warrant that was signed authorizing the  
13 execution for the search warrant at 4 Packard Court,  
14 Apartment D.

15 Q. And what date was this signed?

16 A. This was signed on December 14th, 2018.

17 Q. And is there a time stamp on there as well?

18 A. Time was 3:02 p.m..

19 Q. All right. And do you know who wrote that in?

20 A. That was done by Judge Roemer.

21 **MR. CULLINANE:** Your Honor, the Government offers  
22 Government Exhibit No. 1 for admission.

23 **MR. STACHOWSKI:** I have no objection.

24 **MAGISTRATE JUDGE ROEMER:** Government Exhibit 1 shall  
25 be admitted into evidence.

1                   (WHEREUPON, Government Exhibit 1 was received into  
2 evidence).

3 **BY MR. CULLINANE:**

4 Q.   Now, separately, Agent, in anticipation of today's  
5 suppression hearing, did you review the accompanying search  
6 warrant application and affidavit?

7 A.   Yes, I did.

8 Q.   Are you familiar with the information contained therein?

9 A.   I am.

10 Q.   Is it your understanding that both the application and the  
11 affidavit remain under seal today?

12 A.   Yes.

13 Q.   But you've reviewed those?

14 A.   I have.

15 Q.   Now, following the granting of the search warrant by this  
16 Court, what did law enforcement start to do?

17 A.   At that point we began to plan for the -- for the actual  
18 search and potential probable cause arrest for Mr. Richards.

19 Q.   How did you do that?

20 A.   We alerted the SWAT team and notified them that we had an  
21 arrest that was coming up so that they could begin their  
22 planning, as well as notifying our bomb techs and our evidence  
23 technicians within their office.

24 Q.   And, generally speaking, what does the SWAT team do to  
25 become prepared for the execution of a search warrant?

1 A. So they will look at the general area of where the target  
2 residence is; they will also conduct -- they will actually  
3 just look to see any criminal history or any reporting from  
4 the case agents that would be useful for them for their  
5 execution.

6 Q. Now, separate from the SWAT team's preparation, did law  
7 enforcement also conduct surveillance of Mr. Richards?

8 A. That's correct.

9 Q. How was that accomplished?

10 A. Members of our task force were set up outside of the  
11 residence as well as having a pole camera that was set up that  
12 could view the residence as well.

13 Q. And I should ask, too, and I'll ask you questions about  
14 the conducting of the surveillance, but you mentioned that the  
15 SWAT team also started to speak with bomb technicians; is that  
16 correct?

17 A. That's correct.

18 Q. Did the bomb technicians also start to gather any sort of  
19 machines that they may need?

20 A. Yes, sir.

21 Q. What types of machines?

22 A. One would be one of the robots --

23 Q. Okay.

24 A. -- that they would use.

25 Q. Are those the same robots you discussed earlier?

1 A. Yes.

2 Q. Okay. All right. Now, back to the surveillance at  
3 Mr. Richards' residence. What did law enforcement observe at  
4 that time?

5 A. At the time that they observed it Mr. Richards was inside  
6 of the residence and they observed a -- another vehicle show  
7 up and a man exit that vehicle and enter the residence.

8 Q. And what happened then?

9 A. From that point the SWAT team was notified, they were set  
10 up in a separate location and ready to deploy if Mr. Richards  
11 left the residence.

12 Q. Now, at some point did law enforcement observe  
13 Mr. Richards leave the residence?

14 A. Yes, he did.

15 Q. And did he leave with anyone else?

16 A. He left with the other individual that was -- that was in  
17 that vehicle that showed up.

18 Q. Now, I should ask this question as well: You spoke about  
19 cooperating sources providing information regarding  
20 Mr. Richards?

21 A. Yes.

22 Q. Specifically what information did they provide about  
23 Mr. Richards being in possession of a firearm?

24 A. All the reporting they gave us is that any time he left,  
25 he typically carried a .45 on him, on his person.

1 Q. Any time he left meaning --

2 A. The residence.

3 Q. So if he was not in the residence and he's outside of the  
4 residence, your understanding was he was in possession of a  
5 firearm?

6 A. Yes.

7 Q. So at this time law enforcement observed Mr. Richards  
8 leave the residence; is that correct?

9 A. That's correct.

10 Q. And what happened then?

11 A. From that point they observed Mr. Richards enter the  
12 driver's seat of a white Dodge Durango, then the other male  
13 entered the passenger -- the front passenger seat of the  
14 Dodge Durango, then they left the area of the residence.

15 Q. Approximately what time is this on December 14th, 2018?

16 A. Approximately -- I'm not actually sure to tell you the  
17 truth. I believe it was around 6 p.m..

18 Q. Let me ask you this: Was it light out still?

19 A. The sun was going down, sir.

20 Q. So it was becoming dark?

21 A. Yes, sir.

22 Q. Okay. And he and this other individual are in a Dodge  
23 Durango?

24 A. Yes, sir.

25 Q. Okay. All right. What is the Dodge Durango doing now



1 that the two have entered into the car?

2 A. It leaves the residence and starts driving down the street  
3 towards -- what we realized was going towards a bar.

4 Q. Where are you at the time when he has -- when Mr. Richards  
5 has now entered the car and began driving away?

6 A. My vehicle was directly behind the white Dodge Durango.

7 Q. So you were close by the area?

8 A. That's correct.

9 Q. Did you see him enter into the car?

10 A. I did not.

11 Q. All right. Were you made aware of this from someone else?

12 A. I was.

13 Q. All right. And is that from another law enforcement  
14 officer?

15 A. It was.

16 Q. Okay. Now, what happened as the vehicle was driving?

17 A. As the vehicle was driving, my vehicle as well as several  
18 other SWAT team vehicles that had operators in it followed in  
19 behind us. Then a Niagara Falls -- or a Niagara County  
20 Sheriff's Office marked unit directly came behind  
21 Mr. Richards' vehicle.

22 Q. Okay. So previously you were in a vehicle that was behind  
23 him and then another vehicle got in front of you and got  
24 behind Mr. Richards' vehicle?

25 A. That's correct.

1 Q. Okay. While you're directly behind Mr. Richards' vehicle,  
2 what observations are you making about the vehicle and any  
3 occupants in the vehicle?

4 A. I could see that there was at least two people inside of  
5 the vehicle. The back of the -- of the Durango itself  
6 appeared to be tinted, but I could see that there was two  
7 people up in the front of it, a driver and a passenger.

8 Q. Now, you said you could see at least two people?

9 A. That's correct.

10 Q. Do you know how many people were total in the car?

11 A. At that point, no.

12 Q. How is it that you couldn't tell?

13 A. There could have been a person laying down in the back  
14 seat; also the windows were tinted enough that I couldn't see  
15 into it.

16 Q. Now, ultimately was the car stopped?

17 A. It was.

18 Q. Was the car stopped or did the car come to a stop?

19 A. The car came to a stop within the parking lot of Dave's  
20 Last Chance.

21 Q. And what is Dave's Last Chance?

22 A. It's a bar and grill up in Niagara Falls.

23 Q. Agent, were you present when the car stopped?

24 A. Yes, I was.

25 Q. To be clear, the car containing -- that ultimately

1 contained Mr. Richards?

2 A. Yes, sir.

3 Q. All right. And at that time did other law enforcement  
4 personnel arrive in their vehicles?

5 A. Yes, they did.

6 Q. And what happened then?

7 A. At that point our SWAT team conducted the traffic stop of  
8 Mr. Richards and the other individual that was inside of the  
9 vehicle.

10 Q. Now, you stated that there was a Niagara County sheriff's  
11 deputy who began driving behind Mr. Richards' car?

12 A. That's correct.

13 Q. Did that vehicle have a recording device in the car?

14 A. It did.

15 Q. And did it record this encounter?

16 A. It did.

17 Q. Have you had an opportunity to watch that video?

18 A. I have.

19 Q. I'm showing you what's marked for today's purposes as  
20 Government's Exhibit No. 2. Agent Weis, are you familiar with  
21 what this is?

22 A. I am.

23 Q. What are you looking at right now?

24 A. This is the CD that contains the recording from the marked  
25 unit the night of the traffic stop.

1 Q. Is there also a post-it on there?

2 A. There is.

3 Q. Is that the password for the disk?

4 A. That's correct.

5 Q. Okay. And have you had an opportunity to watch this disk?

6 A. I have.

7 Q. And is this disk a true and accurate copy of the recording  
8 of the arrest of Mr. Richards on December 14th, 2018?

9 A. It is.

10 **MR. CULLINANE:** Your Honor, the Government at this  
11 time offers Government Exhibit No. 2 for admission.

12 **MAGISTRATE JUDGE ROEMER:** Mr. Stachowski?

13 **MR. STACHOWSKI:** Is that the video that we're  
14 talking about?

15 **MAGISTRATE JUDGE ROEMER:** I think it's the video  
16 from the deputy sheriff's car of the actual stop of the  
17 vehicle and the removal of Mr. Richards.

18 **MR. STACHOWSKI:** Even though we don't have the  
19 deputy sheriff here, I won't object for purposes of this --

20 **MAGISTRATE JUDGE ROEMER:** Okay, this is No. 2?

21 **MR. CULLINANE:** No. 2, yes.

22 **MAGISTRATE JUDGE ROEMER:** Government Exhibit No. 2  
23 is admitted into evidence.

24 **MR. CULLINANE:** Thank you.

25 **(WHEREUPON, Government Exhibit 2 was received into**

1 evidence).

2                   **MR. CULLINANE:** For the record, these are copies  
3 that the Court and defense counsel have received. I've  
4 already placed it in the laptop. And I'll open the laptop now  
5 and play the disk.

6                   Your Honor, I'm going to play Government  
7 Exhibit No. 2 from the beginning.

8 **BY MR. CULLINANE:**

9 Q. All right, I've stopped it at the five second stamp, time  
10 stamp mark. Agent Weis, can you please describe what we're  
11 seeing at this time?

12 A. At this point the view is coming from the Niagara County  
13 Sheriff officer's marked unit. Immediately in front of him is  
14 the white Dodge Durango with Mr. Richards in it.

15 Q. And this is the one you just previously described?

16 A. This is.

17 Q. Specifically the white Dodge Durango?

18 A. Correct.

19 Q. I'm going to continue playing from the 5 second mark.

20                   Agent, while this is playing, generally speaking,  
21 what road or what area is -- is this depicting right now?

22 A. This is in the vicinity of Niagara Falls.

23                   **MR. STACHOWSKI:** Objection, Your Honor. He didn't  
24 respond to the question. He just said -- he asked what road  
25 and he answered the City of Niagara Falls.

1                   **MAGISTRATE JUDGE ROEMER:** Do you want to rephrase  
2 your question?

3 **BY MR. CULLINANE:**

4 Q.   Agent, generally speaking, what area or town is this video  
5 depicting?

6 A.   It's depicting Niagara Falls area, County Road that was  
7 right near there where Dave's Last Chance bar is.

8 Q.   I'm going to continue from the 28 second mark.

9                   **(WHEREUPON, the video was played).**

10 **BY MR. CULLINANE:**

11 Q.   I've stopped now at the 34 second mark. Can you please  
12 describe what just happened?

13 A.   The white Dodge Durango pulled into the parking lot and  
14 the marked unit came up directly behind it.

15 Q.   And pulled into the parking lot of what?

16 A.   Of the bar, of Dave's Last Chance.

17 Q.   I'll continue from the 34 second mark.

18                   **(WHEREUPON, the video was played).**

19 **BY MR. CULLINANE:**

20 Q.   I've now stopped at the 47 second mark. What's happening  
21 now?

22 A.   At this point members of the FBI Buffalo SWAT team  
23 deployed and are right outside of the white Dodge Durango.

24 Q.   Agent, what is the purpose of everyone arriving now from  
25 the SWAT team?

1 A. It's to secure Mr. Richards and to -- to facilitate an  
2 arrest.

3 Q. And to secure him for what purpose?

4 A. Because we believe that he had a gun on him, a .45  
5 caliber.

6 Q. And following the custody of him, would the SWAT team then  
7 execute the search warrant?

8 A. Yes.

9 Q. You wanted to accomplish this first?

10 A. That's correct.

11 Q. For what reason?

12 A. We wanted to secure him as well as his cell phone. Again,  
13 we weren't sure what the type of detonation device would have  
14 been for the -- for the potential bomb, whether it was a cell  
15 phone. So we immediately wanted to secure him as well as the  
16 cell phone.

17 Q. I'm going to continue from the 47 second mark.

18 (WHEREUPON, the video was played).

19 **BY MR. CULLINANE:**

20 Q. I've stopped it at the one minute 30 second mark. Agent,  
21 is there a reason that law enforcement is providing commands  
22 to the defendant in certain manners?

23 A. Yes.

24 Q. Why is that?

25 A. It's to put him in a position of -- it's essentially --

1 it's to gain the advantage over him, to make sure it was safe,  
2 that he couldn't have access and couldn't reach for a pistol.

3 Q. And to be clear, I should ask this question, it appears --  
4 it sounds like there are commands being given to him; is that  
5 correct?

6 A. There are.

7 Q. Are those are from a law enforcement personnel officer?

8 A. Yes.

9 Q. Let me continue from the minute 30 second mark.

10 (WHEREUPON, the video was played).

11 **BY MR. CULLINANE:**

12 Q. I've stopped at the minute and 55 second mark. Agent, who  
13 are we observing at this time who just exited the vehicle?

14 A. That's Mr. Richards that exited the vehicle.

15 Q. And does it appear to be the same person who began driving  
16 the vehicle after exiting Mr. Richards' residence?

17 A. Yes, sir.

18 Q. Let me continue from the minute 55 second mark.

19 **MR. STACHOWSKI:** Your Honor, I have to object  
20 because how would he know that? Because -- because how would  
21 he know that because his original testimony was that he did  
22 not see Mr. Richards enter the vehicle. So he's doing that on  
23 an assumption as opposed to knowing that it's the same person.

24 **MAGISTRATE JUDGE ROEMER:** I don't recall that being  
25 his testimony, that he didn't know it was Mr. Richards getting



1 into the vehicle.

2 Mr. Cullinane?

3 **MR. STACHOWSKI:** No, he would -- he didn't see him.

4 **MR. CULLINANE:** I can ask follow-up questions to  
5 clarify this.

6 **MAGISTRATE JUDGE ROEMER:** Okay.

7 **BY MR. CULLINANE:**

8 Q. Agent Weis, did you see Mr. Richards enter the vehicle  
9 from the home?

10 A. No, I did not.

11 Q. Were you aware that other law enforcement officers saw  
12 Mr. Richards enter the vehicle?

13 A. I was.

14 Q. Prior to this time, to this encounter with Mr. Richards,  
15 had you seen a picture of Mr. Richards?

16 A. I have.

17 Q. Were other law enforcement officers also aware of what  
18 Mr. Richards looked like based on a picture?

19 A. Yes, they were.

20 Q. At this time when Mr. Richards entered the -- exited the  
21 car, were you with other law enforcement officers who had  
22 observed Mr. Richards leave the residence and enter the car?

23 A. Yes.

24 Q. And specifically those who said that he entered the  
25 driver's seat?

1 A. That's correct.

2 Q. Were you made aware that he had entered the driver's seat  
3 at the time when he did?

4 A. Yes.

5 Q. How was that?

6 A. Via one of our radios inside of our vehicle; a description  
7 of him was also put out over the radio.

8 Q. And that's prior to the encounter that we have on the  
9 video right now at the one minute 55 second mark?

10 A. That's correct.

11 Q. All right. I'll continue from this point.

12 (WHEREUPON, the video was played).

13 **BY MR. CULLINANE:**

14 Q. I stopped it at the two minute 43 second mark. What did  
15 we just watch?

16 A. We just watched Mr. Richards go down to his knees, be put  
17 in handcuffs by a SWAT operator.

18 Q. For what purpose was he placed in handcuffs at that time?

19 A. To -- because he was under arrest at that point and to  
20 ensure that he didn't reach for anything that could have been  
21 in his waistband.

22 Q. Now, was there a command just given as well to someone  
23 else in the vehicle?

24 A. Yes, there was.

25 Q. For what purpose was that?

1 A. It was to also ensure that that individual didn't reach  
2 for any type of weapon or anything like that, to keep his  
3 hands outside the vehicle.

4 Q. Let me continue playing from the two minute 43 second  
5 mark.

6 (WHEREUPON, the video was played).

7 **BY MR. CULLINANE:**

8 Q. I've stopped it at the three minute and 26 second mark.  
9 Agent, Mr. Richards has now gone off screen; is that correct?

10 A. That's correct.

11 Q. What's occurring or about to occur with him at that time?

12 A. At that point he's searched for any weapons or anything  
13 that could be harmful.

14 Q. What could be harmful?

15 A. Knives, syringes, anything that can stab, poke, anything  
16 -- any type of firearm, anything like that.

17 Q. Was there also concern about any cell phones?

18 A. Yes.

19 Q. For what reason?

20 A. In order to detonate any device.

21 Q. Now, Mr. Richards has just been taken into custody, he's  
22 off screen now. And I should ask: Was he considered a  
23 high-risk person?

24 A. He was.

25 Q. Or a high-risk target I should say?

1 A. Yes, sir.

2 Q. Why is that?

3 A. Because he was known to carry guns, because he was a  
4 narcotics trafficker, and also because he was known as a bomb  
5 maker.

6 Q. Let me continue from the three minute 26 second mark.

7 (WHEREUPON, the video was played).

8 **BY MR. CULLINANE:**

9 Q. I've stopped at the four minute 26 second mark. Agent  
10 Weis, this passenger, this individual, has similarly received  
11 instructions; is that correct?

12 A. That's correct.

13 Q. From law enforcement?

14 A. Yes.

15 Q. Why was he treated in the same manner?

16 A. Because we were unsure who he actually was and any  
17 relation he could have had. He might have had a firearm on  
18 him as well. It's all -- anybody that's inside the vehicle is  
19 treated the exact same way.

20 Q. So Mr. Richards was identified initially as the person at  
21 the residence whose residence was going to be searched; is  
22 that correct?

23 A. That's correct.

24 Q. But this person was in the car with him and, therefore,  
25 became someone also law enforcement needed to be suspicious

1 of?

2 A. Yes.

3 Q. Let me continue from the four minute 26 second mark.

4 (WHEREUPON, the video was played).

5 **BY MR. CULLINANE:**

6 Q. All right, I've stopped it now at the six minute and 14  
7 second mark. What did we just observe?

8 A. We just observed the passenger being taken into custody  
9 and moved off screen.

10 Q. Ultimately was his -- did you learn his identity?

11 A. Law enforcement did. I am unaware of what his identity  
12 is.

13 Q. Similarly he's now off screen and what -- what is going --  
14 or what will happen with him at this point following his being  
15 taken into custody?

16 A. He'll be questioned for who he is, his identity will be  
17 established, they will check for his ID, and then typically  
18 what happens is they will check for any warrants or wants for  
19 that individual.

20 Q. Will he also be searched for anything unlawful or  
21 dangerous on him?

22 A. That's correct.

23 Q. Let me continue from the six minute 14 second mark.

24 (WHEREUPON, the video was played).

25 **BY MR. CULLINANE:**

1 Q. I stopped it at the six minute and 22 second mark. Was  
2 there a command that was just given?

3 A. There was.

4 Q. What was that command?

5 A. The command was for anyone else that was inside of the  
6 vehicle to move their hands outside of it.

7 Q. Did law enforcement know there was anyone else in the  
8 vehicle?

9 A. They were unaware 100% if there was anyone else inside of  
10 the vehicle.

11 Q. And why is that?

12 A. Because we couldn't see inside of the vehicle.

13 Q. And so why are these commands given?

14 A. These commands are given in preparation that there is  
15 someone there.

16 Q. So is there an assumption that there could be someone else  
17 in the car?

18 A. Yes.

19 Q. Why is there -- why does law enforcement make that  
20 assumption?

21 A. Based off of prior experiences that law enforcement -- of  
22 law enforcement encounters.

23 Q. Is that to be safe?

24 A. Yes.

25 Q. Let me continue from the six minute 22 second mark.

1 (WHEREUPON, the video was played).

2 BY MR. CULLINANE:

3 Q. Now, I've stopped at the six minute and 49 second mark.

4 Has any other person in the vehicle raised their hands?

5 A. No.

6 Q. As a result of that not occurring, what does law  
7 enforcement presume?

8 A. They presume that there still could be someone up in that  
9 part of the vehicle.

10 Q. Someone who has just not responded yet?

11 A. Correct.

12 Q. Let me continue from the six minute 49 second mark.

13 (WHEREUPON, the video was played).

14 BY MR. CULLINANE:

15 Q. All right, I've stopped at the seven minute and three  
16 second mark. What did we just see?

17 A. We just observed three SWAT operators move up to the  
18 vehicle to visually check. Then two of the operators -- one  
19 of them opened up the door, the rear passenger door, and the  
20 other one visually checked it.

21 Q. And for what purpose?

22 A. Purpose is to see if there's anyone else inside of the  
23 vehicle.

24 Q. All right. Now, you said to see if there's someone else  
25 inside the vehicle?

1 A. Yes.

2 Q. Are they looking for any evidence, non-human evidence in  
3 the car?

4 A. They're not looking for it, but it's been observed  
5 previously based off prior law enforcement encounters in  
6 traffic stops, yes.

7 Q. But at this time the purpose is to do what?

8 A. It's just to check for if there's anyone else inside of  
9 the vehicle.

10 Q. And let me ask it this way: Are you stating that if  
11 there's something in plain view, they may see it?

12 A. Yes.

13 Q. But right now the purpose is for what?

14 A. The purpose is to make sure that there was no one else  
15 inside of the vehicle.

16 Q. Let me continue from the seven minute and three second  
17 mark.

18 (WHEREUPON, the video was played).

19 **BY MR. CULLINANE:**

20 Q. Agent, I've stopped it at the seven minute and 22 second  
21 mark. And I should ask: Where are you at this time?

22 A. At this point I was to the passenger side of this marked  
23 unit.

24 Q. So you are off screen?

25 A. I am.



1 Q. And you have remained -- you have been off screen the  
2 whole time?

3 A. That's correct.

4 Q. Were you able to observe all this from your vantage point?

5 A. Yes, I am.

6 Q. What did we just see here at the seven minute 22 second  
7 mark?

8 A. At this point two SWAT operators moved to the rear hatch  
9 and begin to open it to see if there's anyone in the rear of  
10 the vehicle.

11 Q. Now, there's a third SWAT team member at the car; is that  
12 correct?

13 A. There is.

14 Q. And where is that person?

15 A. He is up still near the driver's side of the vehicle.

16 Q. Did you become aware at that time if that person observed  
17 anything?

18 A. I was not at that point, but I did notice that he was  
19 holding on that area.

20 Q. Okay. Do you know who that is?

21 A. Yes, I am.

22 Q. Who is that?

23 A. Special Agent Mark Schirching.

24 Q. Okay. Is that someone you've worked with?

25 A. Yes.

1 Q. And you're familiar with him?

2 A. Yes.

3 Q. Let me continue from the seven minute 22 second mark.

4 (WHEREUPON, the video was played).

5 **BY MR. CULLINANE:**

6 Q. I've stopped it now at the seven minute and 48 second  
7 mark. Can you please describe what we just saw and heard?

8 A. At this point the rear hatch was opened, the vehicle was  
9 visually cleared for any individuals that could have been in  
10 the car.

11 Q. Did you hear anything on the audio part of this?

12 A. Yes.

13 Q. All right. What did you hear?

14 A. I stated to -- I stated something to Chris Fiorito, who is  
15 one of the -- who is a SWAT team leader at the time.

16 Q. And what was that?

17 A. I just said his name, Chris.

18 Q. Let me continue from the seven minute 48 second mark.

19 (WHEREUPON, the video was played).

20 **BY MR. CULLINANE:**

21 Q. I'm just stopping it at the seven minute and 55 second  
22 mark. Did you see a SWAT team member at the rear hatch of the  
23 vehicle?

24 A. Yes.

25 Q. What did that person do?

1 A. He just popped open, I believe, a compartment that's in  
2 the back hatch area.

3 Q. What was the purpose of opening up the back compartment?

4 A. To also ensure that there was no one inside of that  
5 because that was not checked at that point.

6 Q. Okay. And that was to check for what?

7 A. Another person.

8 Q. Who could be hiding in that part?

9 A. Yes.

10 Q. Based on your training and experience as well as your  
11 other law enforcement officers, is it possible someone could  
12 be hiding in that type of compartment in a vehicle like this?

13 A. Yes.

14 Q. Let me continue from the seven minute 55 second mark.

15 (WHEREUPON, the video was played).

16 **BY MR. CULLINANE:**

17 Q. All right, I'm stopping it at the eight minute and 12  
18 second mark. What did we just see here?

19 A. One of the SWAT team members said something to me and I'm  
20 starting to approach the vehicle.

21 Q. Do you recall what was said generally?

22 A. Generally I was told that there was a firearm under the  
23 driver's seat of the Dodge Durango.

24 Q. You said the driver's seat; is that correct?

25 A. Yes.

1 Q. Is that where Mr. Richards was in the vehicle prior to  
2 being ordered to get out of the vehicle?

3 A. Yes.

4 Q. Now, at this point have you observed any law enforcement,  
5 SWAT team member enter that part of the vehicle?

6 A. No.

7 Q. Let me continue from the eight minute and 12 second mark.  
8 (WHEREUPON, the video was played).

9 MR. STACHOWSKI: Judge, are we saying that he  
10 observed anyone enter it or did he see a head go in there just  
11 a few seconds before that? Is that what you're talking about,  
12 did he see that person put his head in the car?

13 MAGISTRATE JUDGE ROEMER: Mr. Cullinane, do you want  
14 to clarify?

15 MR. CULLINANE: Absolutely.

16 BY MR. CULLINANE:

17 Q. Agent Weis, from your vantage point did it appear to you  
18 that anyone had entered the car and searched the car?

19 A. From my view, no.

20 Q. Okay. In fact, at that time how did you have an  
21 understanding that someone had observed or noted a gun?

22 A. It was said from the SWAT operators that were up by the  
23 front, Mark Schirching was one of the SWAT operators that let  
24 everybody know that there was a firearm up in the front.

25 Q. Let me continue playing from the eight minute 13 second

1 mark.

2 (WHEREUPON, the video was played).

3 BY MR. CULLINANE:

4 Q. Now, I've stopped it at the eight minute and 20 second  
5 mark. Can you describe what we're just seeing here?

6 A. At this point I moved up to the driver's side of the  
7 vehicle and I'm trying to look to see where this firearm is.

8 Q. And did that require you to insert your head closer into  
9 the vehicle?

10 A. Yes, it did.

11 Q. Okay. And what were you doing at that time?

12 A. At that time I was listening to the other SWAT operators  
13 that were next to me describing what it was.

14 Q. Let me continue playing from the eight minute 20 second  
15 mark.

16 (WHEREUPON, the video was played).

17 BY MR. CULLINANE:

18 Q. I've stopped it at the nine minute 15 second mark. What  
19 have we just observed?

20 A. I took a photo at that point of the firearm inside --  
21 underneath the driver's seat.

22 Q. Why did you take a photo of the firearm?

23 A. As evidence.

24 Q. I'm showing you what's been marked for today's purposes  
25 only as (inaudible). Are you familiar with this document?

1 A. I am.

2 Q. What is this?

3 A. This is the photo that I took of the -- underneath the  
4 driver's seat with the pistol in plain view.

5 Q. And is this a true and accurate copy of that photograph?

6 A. This is.

7 **MR. CULLINANE:** And maybe I'll use the ELMO if  
8 that's okay, Rosalie?

9 **THE CLERK:** It should be on.

10 **MR. STACHOWSKI:** Judge --

11 **MAGISTRATE JUDGE ROEMER:** Hang on a second.  
12 Mr. Stachowski?

13 **MR. STACHOWSKI:** My client needs a short break for  
14 the bathroom.

15 **MAGISTRATE JUDGE ROEMER:** Okay, we're going to break  
16 then, Mr. Cullinane, because I have a matter on I've got to  
17 handle anyways. So we'll break in this case, we'll hear the  
18 other matter, and then we'll come right back.

19 **MR. CULLINANE:** Thank you.

20 (WHEREUPON, there was a pause in the proceeding.)

21 **THE CLERK:** We are back on the record in U.S.A.  
22 vs. Jeffrey Richards, evidentiary hearing.

23 **MAGISTRATE JUDGE ROEMER:** Agent Weis, just a  
24 reminder, you're still under oath, sir.

25 **THE WITNESS:** Yes, Judge.

1           **MR. CULLINANE:** Judge, at this time the Government  
2 offers Government Exhibit No. 3 for admission.

3           **MAGISTRATE JUDGE ROEMER:** What is Government 3?

4           **MR. CULLINANE:** It's a picture that Agent Weis --

5           **MAGISTRATE JUDGE ROEMER:** Oh, the picture?

6           **MR. CULLINANE:** Yes, thank you.

7           **MAGISTRATE JUDGE ROEMER:** Mr. Stachowski?

8           **MR. STACHOWSKI:** I have no objection for purposes  
9 of --

10           **MAGISTRATE JUDGE ROEMER:** Government Exhibit 3 shall  
11 be admitted into evidence.

12           (WHEREUPON, Government Exhibit 3 was received into  
13 evidence).

14           **MR. CULLINANE:** Judge, I'll place Government  
15 Exhibit No. 3 on the ELMO.

16 **BY MR. CULLINANE:**

17 Q.   Agent Weis, can you see Government Exhibit No. 3 on the  
18 ELMO?

19 A.   Yes, I can.

20 Q.   And what does Government Exhibit No. 3 show?

21 A.   This is a photo from the driver's -- underneath the  
22 driver's seat of a pistol that's in plain view.

23 Q.   For the record, can you please circle on your screen where  
24 the pistol is?

25           **MR. STACHOWSKI:** I don't think that's working.

1                   **MR. CULLINANE:** Yeah, I don't believe it's showing  
2 up.

3                   **MR. STACHOWSKI:** He said that he disconnected that  
4 because he couldn't get that to work.

5                   **MR. CULLINANE:** Oh, okay.

6                   **MAGISTRATE JUDGE ROEMER:** Agent Weis, why don't you  
7 step down and you point on the ELMO where the pistol is?

8                   **THE WITNESS:** Yes, Your Honor.

9                   **MAGISTRATE JUDGE ROEMER:** Okay. Okay,  
10 Mr. Stachowski, you see where he's pointing?

11                   **MR. STACHOWSKI:** I do.

12                   **MAGISTRATE JUDGE ROEMER:** Okay. You can retake the  
13 stand.

14                   **MR. CULLINANE:** Judge, if it's okay if he stays here  
15 just so I can ask him another question?

16                   **MAGISTRATE JUDGE ROEMER:** Okay.

17                   **MR. CULLINANE:** I think that's a good idea. Thanks  
18 for letting him step down.

19                   **MAGISTRATE JUDGE ROEMER:** Okay.

20 **BY MR. CULLINANE:**

21 Q. Agent Weis, you've just with your finger indicated where  
22 the pistol is; is that correct?

23 A. Yes.

24 Q. This is underneath the car seat?

25 A. The car seat is actually (inaudible).



1 Q. So you were there and you saw this firearm?

2 A. Yes.

3 **THE CLERK:** Can you just --

4 **BY MR. CULLINANE:**

5 Q. You were there and you saw the firearm; is that correct?

6 A. That's correct.

7 Q. Was part of the firearm underneath the vehicle -- the  
8 seat?

9 A. Part of it was, yes.

10 Q. And the other part was where?

11 A. Exposed out in plain view.

12 Q. Of --

13 **MAGISTRATE JUDGE ROEMER:** That appears to be the  
14 handle of the firearm; is that correct?

15 **THE WITNESS:** Yes, Judge.

16 **MAGISTRATE JUDGE ROEMER:** That you can see? And is  
17 that the -- to the right, that's the front of the seat?

18 **THE WITNESS:** Yes, it is, Judge. I'll point to it.  
19 This is the front of the seat right here.

20 **MAGISTRATE JUDGE ROEMER:** Okay. And then to the  
21 left is the actual floor of the vehicle?

22 **THE WITNESS:** This is -- this is the floor of the  
23 vehicle, Your Honor.

24 **MAGISTRATE JUDGE ROEMER:** Up at the top there --  
25 there seems to be some kind of object right there. Yeah, what

1 is that?

2                   **THE WITNESS:** That's just part of the actual  
3 flooring --

4                   **MAGISTRATE JUDGE ROEMER:** Okay.

5                   **THE WITNESS:** -- Your Honor, I believe it's just  
6 standard in most vehicles.

7                   **MAGISTRATE JUDGE ROEMER:** Okay.

8 **BY MR. CULLINANE:**

9 Q. Is that even part of maybe the body of the vehicle being  
10 exposed through what looks likes carpet of some kind?

11 A. Yes, I believe so.

12 Q. All right. And, generally speaking, what direction is the  
13 steering wheel in from where the gun is?

14 A. The steering wheel would be to the left of the gun. So it  
15 would be over on this side.

16 Q. Okay. So can you draw -- well, with your finger can you  
17 direct the Court like a straight line from the car seat to the  
18 steering wheel? So that gives us an orientation of where this  
19 gun was?

20 A. Yes.

21 Q. Okay. Thank you, Agent.

22                   **MAGISTRATE JUDGE ROEMER:** Before you leave, did you  
23 take this picture?

24                   **THE WITNESS:** I did.

25                   **MAGISTRATE JUDGE ROEMER:** Okay. And you were

1 standing outside the vehicle?

2 **THE WITNESS:** I was standing outside the vehicle.

3 **MAGISTRATE JUDGE ROEMER:** You had a camera in your  
4 hand?

5 **THE WITNESS:** I did.

6 **MAGISTRATE JUDGE ROEMER:** And you were looking down  
7 into the vehicle?

8 **THE WITNESS:** That's correct, Your Honor.

9 **MAGISTRATE JUDGE ROEMER:** Okay. Mr. Stachowski, is  
10 there anymore questions you want to ask about this picture or  
11 do you want to wait? It's up to you.

12 **MR. STACHOWSKI:** I'll wait, Judge.

13 **MAGISTRATE JUDGE ROEMER:** Okay. You can retake the  
14 stand.

15 **BY MR. CULLINANE:**

16 Q. Agent, to be clear, did you use your --

17 **MR. STACHOWSKI:** Wait a minute, I do have a couple  
18 *voir dire* on this picture.

19 **MAGISTRATE JUDGE ROEMER:** Okay.

20 **MR. STACHOWSKI:** Sir, you say you took this picture  
21 from the outside of the vehicle?

22 **THE WITNESS:** I was standing outside of the vehicle,  
23 yes, sir.

24 **MR. STACHOWSKI:** Where outside?

25 **THE WITNESS:** Outside of the driver's side of the

1 door.

2                   **MR. STACHOWSKI:** Did you -- what did you take this  
3 picture with?

4                   **THE WITNESS:** I took it with my Bureau issued cell  
5 phone.

6                   **MR. STACHOWSKI:** Now, did you enlarge it?

7                   **THE WITNESS:** I don't believe I did, sir. I don't  
8 remember.

9                   **MR. STACHOWSKI:** Now, if you were outside the  
10 vehicle and you were looking in, why isn't the steering wheel  
11 in this?

12                   **THE WITNESS:** Just because I moved my phone closer  
13 to it.

14                   **MR. STACHOWSKI:** So you took it from the outside,  
15 and put your phone inside the vehicle?

16                   **THE WITNESS:** I did.

17                   **MR. STACHOWSKI:** Okay.

18                   **MAGISTRATE JUDGE ROEMER:** Anything else,  
19 Mr. Stachowski?

20                   **MR. STACHOWSKI:** No.

21                   **MAGISTRATE JUDGE ROEMER:** Okay. Mr. Cullinane.

22 **BY MR. CULLINANE:**

23 Q. Agent Weis, to be clear, you remained standing outside the  
24 vehicle?

25 A. That's correct.

1 Q. Did your arm enter the vehicle in order to take this  
2 picture?

3 A. Yes.

4 Q. Did your head enter the vehicle in order to take the  
5 picture?

6 A. I don't believe so.

7 Q. But your arm entered the vehicle because that would be the  
8 way to take the picture?

9 A. Yes.

10 Q. Did you touch the firearm?

11 A. At this point, no, I did not.

12 Q. And why is that?

13 A. For FBI policy the pistol or any type of firearm has to be  
14 cleared by either a SWAT operator or a firearms instructor.

15 Q. And you were neither?

16 A. I was neither at the time.

17 Q. Okay. We'll get to it, but ultimately was there a person  
18 on-site who was qualified or certified to take possession of  
19 the gun at that time?

20 A. Yes, there was.

21 Q. Who was that?

22 A. It was Special Agent Mark Schirching.

23 Q. Is that the same agent who actually observed the firearm  
24 initially?

25 A. It was.

1                   **MR. CULLINANE:** Rosalie, at this time if I could  
2 switch back to the laptop?

3                   **THE CLERK:** Mm-hmm.

4                   **MR. CULLINANE:** Thank you very much.

5 **BY MR. CULLINANE:**

6 Q.    I'm going to continue playing from the nine minute and 15  
7 second mark on Government Exhibit No. 2.

8                   (WHEREUPON, the video was played).

9 **BY MR. CULLINANE:**

10 Q.   All right, I've stopped it at the ten minute and 11 second  
11 mark. Can you please tell us what we just observed?

12 A.   I moved away from the vehicle and now I'm talking -- I  
13 don't know what I was actually discussing at the time, but I  
14 was speaking with Mark Schirching.

15 Q.   And what did Mark Schirching just do?

16 A.   Mark Schirching, I believe he secured the actual pistol  
17 itself and then cleared it.

18 Q.   Let me continue playing from the ten minute and 11 second  
19 mark.

20                   (WHEREUPON, the video was played).

21 **BY MR. CULLINANE:**

22 Q.   I've stopped it at the ten minute and 20 second mark.  
23 Were you able to observe Agent Schirching in the last few  
24 seconds?

25 A.   Yes, I was.

1 Q. And did you see him holding anything?

2 A. Yes, he's holding the pistol in his right hand.

3 Q. And is he holding something in his left hand?

4 A. I believe it's a magazine from that pistol.

5 Q. Prior to them being in each of his hands, was the magazine  
6 in the pistol?

7 A. Yes, it was.

8 **MR. STACHOWSKI:** Can we see who is Mark -- I don't  
9 know who is Mark Schirching. They all look alike.

10 **MR. CULLINANE:** Sure.

11 **BY MR. CULLINANE:**

12 Q. Agent, can you please describe or --

13 **MAGISTRATE JUDGE ROEMER:** Why don't you just step  
14 down and point to him.

15 **MR. CULLINANE:** Thank you.

16 **MAGISTRATE JUDGE ROEMER:** I don't know, will that  
17 show up?

18 **MR. CULLINANE:** It won't, but I can --

19 **THE WITNESS:** I can point.

20 **MR. CULLINANE:** Can he point to each monitor for  
21 everyone?

22 **MAGISTRATE JUDGE ROEMER:** Yup, go over and point for  
23 Mr. Stachowski who --

24 **MR. STACHOWSKI:** Okay, which is why? Okay. You  
25 were here? All right.

1                   **MAGISTRATE JUDGE ROEMER:** Okay? So let the record  
2 reflect that Agent Weis has identified Agent Schirching is  
3 that -- yep. And himself -- and you identified yourself in  
4 the freeze frame of the video, okay.

5 **BY MR. CULLINANE:**

6 Q. And, Agent, for the record I've stopped it at the ten  
7 minute and 20 second mark. Looking at the video, where is  
8 Mark Schirching from the observers' vantage point?

9 A. Currently he's up at the -- as you look at him, he's on  
10 the right-hand side of the front of this vehicle.

11 Q. Walking away from Mr. Richards' vehicle; is that correct?

12 A. That's correct.

13 Q. And back towards the dash cam video recording?

14 A. Correct.

15 Q. Okay. Let me continue playing from this point 10:20.

16                   **(WHEREUPON, the video was played).**

17 **BY MR. CULLINANE:**

18 Q. I've now stopped it at the 11 minute and 25 second mark.  
19 Agent, have you had an opportunity to watch and listen to this  
20 video?

21 A. I have.

22 Q. And where and when did you do that?

23 A. I did it approximately a week ago from -- just to watch  
24 this at the U.S. Attorney's Office.

25 Q. And that was actually at my office at the U.S. Attorney's



1 Office?

2 A. Yes, it was.

3 Q. All right. Did you have an opportunity to hear some of  
4 the conversations that are going on in this video as well?

5 A. Yes.

6 Q. All right. Are they a little bit difficult to hear?

7 A. They are.

8 Q. As a result did you watch this a couple times?

9 A. I have.

10 Q. All right. What is your recollection of what you heard on  
11 the video here regarding the recovery of this firearm?

12 A. In the video, I'm not sure at what point, but it was a few  
13 seconds before this, possibly a minute, I could hear Special  
14 Agent Mark Schirching say that they did not search the  
15 vehicle, he saw -- he saw it in plain view.

16 **MR. STACHOWSKI:** I'm going to object to that, Your  
17 Honor. We -- we need either Mark Schirching here or --

18 **MR. CULLINANE:** Your Honor, Agent Schirching is  
19 waiting outside.

20 **MAGISTRATE JUDGE ROEMER:** He's, I think, going to  
21 testify next, Mr. Stachowski.

22 **MR. CULLINANE:** He'll testify next and that's  
23 certainly for the weight of the evidence for the Court to  
24 examine as well.

25 **BY MR. CULLINANE:**

1 Q. Agent Weis, to be clear, this is a conversation that you  
2 were able to hear from the video recording; is that correct?

3 A. That's correct.

4 Q. Did you see the person speak those words?

5 A. In this video?

6 Q. Yes.

7 A. No, you can't see him.

8 Q. Are you familiar with Mark Schirching?

9 A. I am.

10 Q. And have you spoken with him on the phone before?

11 A. I have.

12 Q. How many times?

13 A. More than I can count. We were on the same squad  
14 together, and then he's currently the SWAT team leader.

15 Q. So you're familiar with him?

16 A. I am.

17 Q. And his voice?

18 A. Yes.

19 Q. And it's your belief that that was him speaking about the  
20 recovery of the gun?

21 A. It is my belief, yes.

22 Q. And, in fact, you were there that day?

23 A. I was.

24 Q. And who recovered the firearm?

25 A. Mark Schirching.

1 Q. Let me continue from the 11 minute and 25 second mark.

2 (WHEREUPON, the video was played).

3 BY MR. CULLINANE:

4 Q. Agent, I've turned the volume down as this video continues  
5 playing. At this time what's going on at the scene?

6 A. At this point SWAT operators are going back to their  
7 vehicles. Mr. Richards was in custody off screen. And then  
8 the other individual that was -- the passenger inside of the  
9 vehicle was being questioned by other members of the SWAT  
10 team.

11 Q. Since the recovery of the firearm by Agent Schirching and  
12 the picture that you took at that time, did anyone conduct a  
13 search of the car?

14 A. To my knowledge, no.

15 Q. And up to this point?

16 A. No, they have not.

17 Q. Okay. The video has continued playing and we'll allow it  
18 to continue playing. And I'll turn the volume back up.

19 (WHEREUPON, the video was played).

20 BY MR. CULLINANE:

21 Q. I've stopped it at the 15 minute and 24 second mark. Can  
22 you please describe what we just saw there?

23 A. What happened was a task force officer, Jeffrey Pitlick,  
24 as well as the Niagara County Sheriff, deputy sheriff, they  
25 had a evidence bag that they then placed the property that was

1 seized from Mr. Richards into that bag on camera.

2 Q. Let me continue from the 15 minute and 24 second mark.

3 (WHEREUPON, the video was played).

4 **BY MR. CULLINANE:**

5 Q. I've stopped it at the 17 minute and 1 second mark. Did  
6 you just observe a partial blocking of the view of the Dodge  
7 Durango just then?

8 A. I did.

9 Q. You were at the scene at that time, though; is that  
10 correct?

11 A. I was.

12 Q. Did you observe anyone go into the vehicle and conduct a  
13 search?

14 A. No.

15 Q. Let me continue playing from the 17 minute and 1 second  
16 mark.

17 (WHEREUPON, the video was played).

18 **MAGISTRATE JUDGE ROEMER:** Mr. Cullinane, are we just  
19 gonna watch the video the whole time or -- was there a point  
20 where something happens?

21 **MR. CULLINANE:** Yes, and that will happen  
22 momentarily.

23 **MAGISTRATE JUDGE ROEMER:** Okay.

24 **MR. CULLINANE:** Yes.

25 (WHEREUPON, the video was played).

1 **BY MR. CULLINANE:**

2 Q. All right, Agent, I've stopped at the 21 minute and 16  
3 second mark. What have we just observed?

4 A. We just saw all the SWAT vehicles exit the parking lot or  
5 at least exit the view of the camera.

6 Q. Since the last time I asked you, has anyone entered the  
7 vehicle and conducted any sort of search of the vehicle?

8 A. No.

9 Q. All right. I'm going to continue playing and if it's okay  
10 with the Court and counsel, I'll fast forward it to help with  
11 efficiency of time?

12 **MR. STACHOWSKI:** Yeah, that makes sense.

13 **MAGISTRATE JUDGE ROEMER:** Mr. Stachowski?

14 **MR. STACHOWSKI:** That would make sense.

15 **MAGISTRATE JUDGE ROEMER:** You're fine with that?

16 **MR. STACHOWSKI:** Yes.

17 **MR. CULLINANE:** Okay, thank you.

18 **MR. STACHOWSKI:** I have the video, Your Honor, so I  
19 can, you know --

20 (WHEREUPON, the video was played).

21 **BY MR. CULLINANE:**

22 Q. Okay. I've now stopped it at the 21 minute and 44 second  
23 mark. What have we just observed?

24 A. We just observed this vehicle back out of the -- back out  
25 of the vicinity of the white Dodge Durango and it looked like

1 another vehicle was pulling in to try to make a turn -- it  
2 came into view real quick.

3 Q. Now, that was the Dodge Durango in which Mr. Richards was  
4 found; is that correct?

5 A. That's correct.

6 Q. And do you know what's going on with this patrol car right  
7 now that is recording or recorded the encounter?

8 A. Yes. This was the vehicle that had Mr. Richards in the  
9 back of it and it's leaving the parking lot now and heading  
10 directly to Niagara County Sheriff's Office.

11 Q. Okay. So it had stopped recording obviously the encounter  
12 and any issues at the bar and is now going to record the drive  
13 back to the jail?

14 A. That's correct.

15 Q. Okay. Now, the last thing we saw of the Dodge Durango is  
16 that it was sitting there; is that correct?

17 A. That's correct.

18 Q. Are you aware of any search that was conducted of that car  
19 following the recovery of the gun on the driver's side floor?

20 A. I'm not aware of any search that was taking place  
21 afterwards.

22 Q. Okay. And what happened to that vehicle after the  
23 encounter with Mr. Richards?

24 A. I was traveling back to Niagara County so I believe that  
25 the vehicle was given back to the passenger of the vehicle,

1 who was also released from our custody.

2 Q. Okay. You stated earlier that law enforcement had  
3 determined it was a rental vehicle?

4 A. Yes.

5 Q. Do you know who it had been rented to?

6 A. It had been rented to the passenger's wife.

7 Q. And is that why he was given the vehicle back?

8 A. Yes.

9 Q. All right. Now, Agent, are you familiar, are you aware of  
10 the other evidence recovered from the encounter with  
11 Mr. Richards?

12 A. I am.

13 Q. What else was recovered from Mr. Richards?

14 A. We recovered a cell phone, an LG cell phone, and then the  
15 pistol; and then I believe it was \$449 United States currency.

16 Q. Where was the currency recovered from?

17 A. It was recovered from his person.

18 Q. From his person?

19 A. Yes.

20 Q. And that was after he was removed from the car?

21 A. Yes.

22 Q. Where was the phone recovered from?

23 A. From his person.

24 Q. After he was removed from the car?

25 A. Yes.

1 Q. All right. Was that documented?

2 A. It was.

3 Q. All right. How is that documented?

4 A. In a FBI evidence log.

5 Q. Agent, I'm showing you what's marked for today's purposes  
6 as Government Exhibit No. 4. Agent, are you familiar with  
7 this document?

8 A. I am.

9 Q. And what is this?

10 A. This is a FD-886, which is the evidence recovery log that  
11 we use for the FBI.

12 Q. And it appears to be a form template?

13 A. Yes.

14 Q. But it contains handwriting?

15 A. Yes, it does.

16 Q. Is this your handwriting?

17 A. This is not my handwriting, no.

18 Q. All right. But are you familiar -- were you familiar with  
19 this document at the time it was drafted?

20 A. Yes.

21 Q. You had an opportunity to review this?

22 A. I did.

23 Q. And is this a true and accurate copy of this document?

24 A. Yes.

25 **MR. CULLINANE:** Your Honor, at this time the



1 Government offers for admission Government Exhibit No. 4.

2 **MAGISTRATE JUDGE ROEMER:** Mr. Stachowski?

3 **MR. STACHOWSKI:** I have no objection as a business  
4 record.

5 **MAGISTRATE JUDGE ROEMER:** Government Exhibit No. 4  
6 is admitted into evidence.

7 (WHEREUPON, Government Exhibit 4 was received into  
8 evidence).

9 **BY MR. CULLINANE:**

10 Q. Agent Weis, it appears there contains a date on this  
11 document; is that correct?

12 A. Yes.

13 Q. And what is the date?

14 A. The date is 12/14/18.

15 Q. All right. And what is the significance of that date?

16 A. This is the day of the arrest.

17 Q. And there's a case ID?

18 A. There is.

19 Q. Is that unique to each case?

20 A. It is.

21 Q. All right. Now, there is handwriting regarding the  
22 location. What does that state?

23 A. It states -- it's in parentheses and it says taken off  
24 subject.

25 Q. All right. And there's information regarding the

1 preparer/assistance. What names are listed there?

2 A. Special Agent Seth Fleitman and Special Agent Tom Weis.

3 Q. Now, was Special Agent Fleitman at the scene?

4 A. He was not.

5 Q. Okay. You're listed there; is that correct?

6 A. Yes.

7 Q. And you were at the scene?

8 A. I was.

9 Q. As you testified?

10 A. Yes.

11 Q. Now, there are four items listed under the recovery log  
12 section. Can you please read those into the record?

13 A. Yes. Item 1: AMT cal .45 8 CP back up, serial number DA 3  
14 -- I believe it's 660, and magazine.

15 Item No. 2: Five rounds .45 caliber -- I can't see  
16 what's in the arrow above it, and then in parens taken from  
17 magazine -- I can't make out the last word. Next to that it  
18 says in magazine from item 1.

19 Item 3: \$449 U.S. currency.

20 Item 4: LG cell phone model, I believe that's LG  
21 M3271-FCC ID-ZNFL63 -- I believe that's 8L.

22 **MR. CULLINANE:** And, Your Honor, for the record I  
23 have Government Exhibit 4 in hand and I think it's clearer in  
24 the paper copy rather than the monitor. So if the record  
25 could reflect that?

1                   **MAGISTRATE JUDGE ROEMER:** Okay.

2                   **MR. CULLINANE:** To distinguish it from Agent Weis'  
3 reading from the screen.

4 **BY MR. CULLINANE:**

5 Q.     Agent, there are four entries here regarding items that  
6 were recovered from Mr. Richards; is that correct?

7 A.     That's correct.

8 Q.     To be clear, where were items 1 and 2 recovered from?

9 A.     Those were recovered from the vehicle, the white Dodge  
10 Durango.

11 Q.     And are they referencing the firearm you described Agent  
12 Schirching seeing under the car seat?

13 A.     Yes.

14 Q.     The driver's seat to be clear?

15 A.     Yes.

16 Q.     Item 3 is \$449?

17 A.     Yes.

18 Q.     Where was that found?

19 A.     That was found on Mr. Richards' person.

20 Q.     And the phone is listed as item 4. Where was that found?

21 A.     It was found on Mr. Richards' person.

22 Q.     So apart from the gun and rounds found in the car, were  
23 any other items taken from the vehicle following the stop of  
24 the vehicle of Mr. Richards?

25 A.     No.

1 Q. And was a search conducted of the car prior to being given  
2 back to the passenger?

3 A. No.

4 **MR. CULLINANE:** One second, please.

5 **BY MR. CULLINANE:**

6 Q. Now, Agent, to be clear, was Mr. Richards arrested and  
7 taken into custody that evening?

8 A. He was.

9 Q. And subsequently was the search warrant executed?

10 A. It was.

11 Q. And was that part of the plan to have him in custody first  
12 before executing the search warrant?

13 A. Yes, it was.

14 Q. Now, I'm not going to get into the particulars of that  
15 search warrant, but the next day was a criminal complaint  
16 drafted and submitted to this Court for this Court's review  
17 regarding Mr. Richards?

18 A. Yes, it was.

19 Q. And was that signed by yourself as the affiant?

20 A. Yes.

21 Q. And did the Court sign the criminal complaint?

22 A. Yes.

23 Q. And, Agent Weis, to be clear for the record, have you  
24 testified in any other proceedings regarding Mr. Richards?

25 A. I have not.

1                   **MR. CULLINANE:** Judge, no other further questions at  
2 this time. Thank you.

3                   **MAGISTRATE JUDGE ROEMER:** Thank you.  
4 Mr. Stachowski?

5                   **MR. STACHOWSKI:** Judge, I'll try. I actually need a  
6 bathroom break, but I'll try to work through it.

7                   **MAGISTRATE JUDGE ROEMER:** Okay, let me know when  
8 you --

9                   **MR. STACHOWSKI:** Yeah.

10   **CROSS-EXAMINATION**

11 **BY MR. STACHOWSKI:**

12 Q. Okay. Sir, you say that there was an arrest warrant?

13 A. Yes, sir.

14 Q. Who issued that arrest warrant?

15 A. It was issued from this court, sir, the day after the  
16 execution of the search warrant.

17 Q. So there was no arrest warrant at the time of the stop of  
18 the car?

19 A. No, there was not.

20 Q. Now, the Niagara County sheriff assisted in this action?

21 A. He did.

22 Q. And when -- when you traveled into the Last Chance bar  
23 parking lot, had you been following the Niagara County sheriff  
24 for some time?

25 A. No. The Niagara County sheriff less than a mile hopped in

1 front of my vehicle.

2 Q. Okay. So for a mile the Niagara County sheriff was  
3 immediately behind this vehicle?

4 A. That's correct.

5 Q. And in that video we were able to observe the vehicle  
6 travel in a straight line; is that right?

7 A. I believe so, yes.

8 Q. It didn't make any wavers between lanes, did it?

9 A. No, it did not.

10 Q. And when it came to the Last Chance bar, he engaged a turn  
11 signal to turn into that parking lot, did he not?

12 A. I would have to watch the video again just to make sure,  
13 but I believe he might have, yes.

14 Q. If the video would show that, then he did do that, right?

15 A. That's correct.

16 Q. And he pulled into the parking lot and then stopped?

17 A. Correct.

18 Q. Was he in a parking place?

19 A. I believe he was in a parking spot, yes.

20 Q. Okay. And the Niagara County sheriff stopped behind it?

21 A. He did.

22 Q. Now, at that point did the Niagara County sheriff issue  
23 any traffic tickets?

24 A. No, he did not.

25 Q. Now, they were stopped in a parking spot and at that point

1 the FBI gave them some orders?

2 A. Yes. Once the FBI vehicles moved into place.

3 Q. And did they not say that there was a warrant for his  
4 arrest?

5 A. I believe he did, yes.

6 Q. Okay. And, in fact, there was not a warrant?

7 A. No, we made a probable cause arrest.

8 Q. When you say you "made a probable cause arrest," he wasn't  
9 violating the -- the vehicle and traffic laws, was he?

10 A. No, he was not.

11 Q. And to -- in your own view, you could not determine that  
12 he was violating any laws of the State of New York or the  
13 United States of America at that time, did you?

14 A. During this stop --

15 Q. Yes.

16 A. -- are you referencing?

17 Q. Yes.

18 A. No.

19 Q. Yet you placed him under arrest and ordered him out of the  
20 car?

21 A. Yes.

22 Q. Now, you also ordered the other individual out of the car?

23 A. That's correct.

24 Q. And that individual you later discovered was the actual  
25 renter -- not the actual. Was the husband of the actual

1 renter of the vehicle?

2 A. Yes.

3 Q. And --

4 **MAGISTRATE JUDGE ROEMER:** I just want to clarify.  
5 You say "renter" for the vehicle.

6 **MR. STACHOWSKI:** Well, it was a rental car.

7 **MAGISTRATE JUDGE ROEMER:** Okay. Because earlier I  
8 thought there might have been testimony that she was the owner  
9 of the car, but that's not true? She was the renter?

10 **MR. STACHOWSKI:** In the end Mr. Cullinane asked him  
11 if this was a rental vehicle.

12 **MAGISTRATE JUDGE ROEMER:** Okay, I missed that.  
13 Sorry. Was that a rental vehicle?

14 **THE WITNESS:** It was, Your Honor.

15 **MAGISTRATE JUDGE ROEMER:** Okay.

16 **BY MR. STACHOWSKI:**

17 Q. And Mr. Todd Biro's -- Biro's wife rented the vehicle?

18 A. I believe so, yes.

19 Q. And that was discovered during conversations with Mr.  
20 Biro?

21 A. I was not speaking with him, so I'm not sure if that did  
22 come up.

23 Q. But, nevertheless, during the course of this the vehicle  
24 possession was turned over to Mr. Biro?

25 A. After this, yes.



1 Q. Now, did you pat-down Mr. Richards?

2 A. He was pat-down, yes. I did not, but law enforcement  
3 officers did.

4 Q. And there was no weapons found on his person?

5 A. Not on his person, no.

6 Q. By the way, what crime was Mr. Richards committing when he  
7 walked out of the car?

8 A. When he walked out of the car?

9 Q. Yes.

10 A. None.

11 Q. And at that point in time there was no criminal complaint  
12 that was issued, was there?

13 A. Not for his arrest, no.

14 Q. Now, was Mr. Biro patted down?

15 A. I believe he was.

16 Q. Did he have any weapons or contraband?

17 A. Not to my knowledge.

18 Q. Now, you say that when the door -- that the door was  
19 opened to the back seat because there was belief that there  
20 was a person in there?

21 A. So it's based off of law enforcement previous experiences,  
22 not necessarily with Mr. Richards, but just in general. It's  
23 part of the procedure for our SWAT team and most SWAT teams  
24 will check rear areas of the car just to make sure there's no  
25 other individuals.

1 Q. Now, even though there were -- it was tinted, did someone  
2 go right up to the window and look inside?

3 A. Are you talking about -- at what point, sir?

4 Q. The SWAT team before they opened the door.

5 A. Yes, there was somebody up in the front, but you could not  
6 clearly see into it.

7 Q. But when you go right next to even tinted windows you're  
8 able to see what's inside of the vehicle?

9 A. Depends on the tint, sir.

10 Q. Well, did -- did Niagara County say that there was a  
11 violation of the New York State tinted window code?

12 A. I'm not aware that they have.

13 Q. You know if -- are you aware if there's a regulation and  
14 actually a Vehicle and Traffic Law in place as to the legality  
15 of tinted window?

16 A. I believe there is, sir, but I don't -- I can't testify to  
17 the state or their laws.

18 Q. Now, nevertheless, someone opened the door and looked  
19 inside?

20 A. That's correct.

21 Q. Well, when someone --

22 **MAGISTRATE JUDGE ROEMER:** Let's clarify,  
23 Mr. Stachowski. You say "the door." Which door?

24 **MR. STACHOWSKI:** I'm sorry.

25 **BY MR. STACHOWSKI:**

1 Q. The rear driver's side door?

2 A. Yes, that door was opened.

3 **MAGISTRATE JUDGE ROEMER:** When you say the "rear  
4 driver's side," do you mean the -- the door on the back of the  
5 vehicle?

6 **MR. STACHOWSKI:** Correct.

7 **MAGISTRATE JUDGE ROEMER:** Okay. So it's not on the  
8 driver's side or the passenger's side, it's just the door --

9 **MR. STACHOWSKI:** No, no, no, I'm not talking about  
10 the hatch. I'm talking about the rear passenger's --

11 **MAGISTRATE JUDGE ROEMER:** Okay, you're talking about  
12 the passenger's side -- this is a four door?

13 **MR. STACHOWSKI:** Yes.

14 **MAGISTRATE JUDGE ROEMER:** I don't even know if we  
15 established that.

16 **BY MR. STACHOWSKI:**

17 Q. I'm sorry, are there four doors to this vehicle?

18 A. Four passenger doors and then the rear hatch.

19 Q. All right. And so the door behind the driver's door, that  
20 was the one that was opened?

21 A. Yes, it was.

22 Q. And they looked inside and there was nobody in there?

23 A. That's correct.

24 Q. Now, when they opened the door, isn't that a search?

25 A. No. He was not searching the vehicle.

1 Q. So he wasn't searching for passengers?

2 A. He was visually searching for passengers. He did not  
3 enter, nor did anyone enter the vehicle --

4 Q. Well, when they opened the door they -- they entered with  
5 their eyes?

6 A. Is that a question, sir?

7 Q. Yes.

8 A. He looked inside the vehicle, yes, sir.

9 Q. And later in that video you see -- strike that.

10 Do you know who the person in the SWAT team was  
11 with the flak jacket on or whatever that is? The jacket,  
12 safety jacket and the red shirt underneath?

13 A. I don't know, sir.

14 Q. Do you know if he bent down to his knees for some purpose?

15 A. I would have to watch the video again, sir.

16 Q. And do you know if he reached into the car when he was on  
17 his knees and -- and reached underneath the driver's seat?

18 A. I would have to see the video, sir.

19 Q. If the video showed that he was on his knees and reached  
20 in with his arm underneath the driver's seat, wouldn't that be  
21 a search?

22 **MR. CULLINANE:** Objection, speculation.

23 **MAGISTRATE JUDGE ROEMER:** Well, it calls for a legal  
24 conclusion on the witness's part.

25 **MR. STACHOWSKI:** Okay.

1                   **MAGISTRATE JUDGE ROEMER:** We're trying to establish  
2 the fact, did he, in fact, reach under the seat or did he not  
3 reach under the seat.

4                   **MR. STACHOWSKI:** All right.

5 **BY MR. STACHOWSKI:**

6 Q. But if the video shows that someone -- someone reached in  
7 and -- and put their hand under the driver's seat, was that  
8 part of the protocol?

9                   **MR. CULLINANE:** Objection. Mr. Stachowski is saying  
10 "if." I mean, we can play the video. I'm happy to que it up  
11 for --

12                   **MR. STACHOWSKI:** Well, let's play the video.

13                   **MR. CULLINANE:** -- Mr. Stachowski if he wants.

14                   **MAGISTRATE JUDGE ROEMER:** Mr. Stachowski?

15                   **MR. STACHOWSKI:** Yeah, we need to play the video. I  
16 think it's somewhere around -- between seven and nine, I  
17 think, I can't recollect where. Oh, no, here, I think it's  
18 12:11 because I wrote down SWAT person in red shirt so that  
19 must mean that I saw it at 10:11.

20                   **MR. CULLINANE:** Okay. I'm sorry, Mike, 12:11?

21                   **MR. STACHOWSKI:** 10. 10. 10.

22                   **MR. CULLINANE:** 10:11?

23                   **MR. STACHOWSKI:** 10. I don't know where I got 12  
24 from. Stop right there.

25 **BY MR. STACHOWSKI:**

1 Q. Do you know who that fellow is in the jeans, the red shirt  
2 coming out in the camouflage jacket?

3 A. Directly in front of the camera, sir?

4 Q. Yes.

5 A. I don't know who that is.

6 Q. He's a member of the FBI SWAT team?

7 A. He is.

8 Q. Okay. Okay. You can go. You can start it again. Maybe  
9 that's past it. It's before -- it's before that. Because it  
10 looks like that's when he -- I put it down at that time,  
11 but -- because I saw the red shirt. I think the incident I'm  
12 looking for is prior to that.

13 **MR. CULLINANE:** What time stamp would you like me to  
14 go back to?

15 **MR. STACHOWSKI:** You know, I wrote down 7:48 and I  
16 wrote --

17 **MAGISTRATE JUDGE ROEMER:** Let's go back to the five  
18 minute mark.

19 **MR. STACHOWSKI:** Yeah, that's probably the best  
20 idea. Because I wrote down three, four different times and  
21 the 12:11 is when I saw the red coming out of his shirt.

22 **MR. CULLINANE:** It's at the 4:56 second mark. Mike,  
23 you just tell me when you want me to stop.

24 **MR. STACHOWSKI:** Okay. Why don't we stop it there  
25 for a second?

1 **BY MR. STACHOWSKI:**

2 Q. Now, sir, this guy in the red, he's reaching his hand  
3 into -- into the back of the vehicle. Why is he doing that?

4 A. I can't testify for what his thoughts were, but what I  
5 believe he was doing was checking to see because he noticed  
6 that compartment there.

7 Q. Well, how -- what's the size of the compartment?

8 A. I don't actually know, sir. I didn't go up to it, but he  
9 would have only done it to see if there was a human being  
10 inside of it.

11 Q. Well, aren't -- aren't those in the back of those SUV  
12 vehicles netting and -- and things that carry stuff?

13 A. I'm not sure, sir.

14 Q. Did -- did you see him open any -- in this video did you  
15 see him open any compartment?

16 A. He lifted up the -- whatever the compartment is in the  
17 back, sir, and visually checked it.

18 Q. Where the spare tire is kept?

19 A. Typically, yes.

20 Q. Now, what kind of person could fit in where the spare tire  
21 is kept?

22 A. I don't know, sir.

23 Q. Were you looking for a midget?

24 A. I don't know, sir.

25 Q. Did you know if Mr. Richards hung around with midgets?

1                   **MR. CULLINANE:** Objection.

2                   **MAGISTRATE JUDGE ROEMER:** Mr. Stachowski, this is a  
3 serious thing here. We're not fooling around.

4                   **MR. STACHOWSKI:** Okay. I am, Judge, but the -- the  
5 testimony to me is incredible.

6                   **MAGISTRATE JUDGE ROEMER:** Maybe you can phrase it in  
7 a different way.

8                   **MR. STACHOWSKI:** Okay.

9 **BY MR. STACHOWSKI:**

10 Q. Did you expect a small person to be there?

11 A. So I did not check that, sir, but he checked it to ensure  
12 the safety of the other officers.

13 Q. That's the person in the red that -- that I was talking  
14 about, correct?

15 A. With the red part of the shirt, sir?

16 Q. Yes.

17 A. If that's the one you're referencing, yes, that's who it  
18 was before.

19 Q. But you don't know who that is?

20 A. Not from -- without being there right now.

21 Q. Did you recollect who -- who was part of the SWAT team  
22 that was there?

23 A. I don't exactly know who was there, but I know who was on  
24 the SWAT team in general at the time, sir.

25 Q. Okay. So you can't by -- by knowing that -- telling us



1 who this person is?

2 A. Not being 100%, no.

3 Q. Okay. Let it go.

4 **MAGISTRATE JUDGE ROEMER:** Just one question. The  
5 way the vehicle is now, the doors that are open, it's the --  
6 both the driver's door, the passenger's door and then the back  
7 driver's door is open?

8 **THE WITNESS:** I don't believe the back passenger  
9 door is, sir.

10 **MAGISTRATE JUDGE ROEMER:** Yeah, back passenger  
11 isn't, but the back driver's side --

12 **THE WITNESS:** Yes, that is open, sir.

13 **MAGISTRATE JUDGE ROEMER:** Okay. And, of course, the  
14 hatchback in the back?

15 **THE WITNESS:** That's correct.

16 **MAGISTRATE JUDGE ROEMER:** Okay.

17 **BY MR. STACHOWSKI:**

18 Q. Sir, is that what you just saw, that was the opening of  
19 that -- of that compartment?

20 A. Yes, it was. He lifted it open.

21 Q. And now that's you in the baseball hat?

22 A. It is.

23 Q. Now, who is that right up against the vehicle (inaudible)?

24 A. Where, sir? Which vehicle?

25 Q. The white vehicle. You can see by the door tan boots and

1 you're right behind the guy (inaudible)?

2                   **THE CLERK:** Mr. Stachowski, you need to speak into  
3 the microphone.

4 **BY MR. STACHOWSKI:**

5 Q.     Assumedly Mr. Schirching.

6 A.     Mr. Schirching is in the khakis right there. He's the  
7 taller.

8 Q.     And that's you walking back?

9 A.     Yes, it is.

10 Q.    And then there's the guy in the khakis there now inside of  
11 the vehicle?

12 A.    He's not inside the vehicle, sir. He's standing outside  
13 of it. I can see his feet.

14 Q.    Now -- now, there's this guy here on his knees?

15 A.    Yes.

16 Q.    And that's the guy in the red again?

17 A.    That's correct.

18 Q.    Okay. You can run it.

19                   **(WHEREUPON, the video was played).**

20 **BY MR. STACHOWSKI:**

21 Q.    What was he doing on his knees looking in that  
22 compartment?

23 A.    I don't know what -- exactly where he was looking at, sir.  
24 It's unclear, and based off the video he could have been  
25 looking inside the video (sic) to see if there's anything

1 underneath the seat, I'm not sure.

2 Q. And at this point you still didn't photograph this gun?

3 A. By this point I have in the video, yes.

4 **MR. STACHOWSKI:** I have -- I'm done with this part,  
5 Your Honor.

6 **MAGISTRATE JUDGE ROEMER:** Okay.

7 **BY MR. STACHOWSKI:**

8 Q. Now, sir, at the onset you said that you observed -- you  
9 were at his -- strike that.

10 You were at the apartment at 4 Packard Road in --  
11 in Niagara Falls?

12 A. At what point, sir?

13 Q. Before you started tailing this white vehicle.

14 A. I was in the vicinity of it. I wasn't directly at the  
15 residence.

16 Q. Okay. Now, someone told you that Mr. Richards had left  
17 the apartment?

18 A. Yes.

19 Q. And was he alone?

20 A. Was who alone, sir?

21 Q. Mr. Richards.

22 A. No, he was with another individual.

23 Q. And what happened to this other individual?

24 A. That other individual based off of the reporting that I  
25 received from the radio entered the passenger side of the

1 white Dodge Durango.

2 Q. Did they say that they saw him pull up to Mr. Richards'  
3 apartment?

4 A. Yes.

5 Q. And did they say that he exited the driver's side?

6 A. I believe that he did, yes.

7 Q. He wasn't in the passenger side?

8 A. At what point, sir?

9 Q. When he first arrived on Packard Road.

10 A. He was driving, sir. He was in the driver's seat.

11 Q. Did anyone else exit the vehicle on Packard Road?

12 A. No.

13 Q. So you saw -- you got a dispatch that two individuals  
14 entered the vehicle?

15 A. That's correct.

16 Q. Did the individual say they saw Mr. Richards with a gun?

17 A. No, they did not say that.

18 Q. And now you say that Mr. Richards entered the driver's  
19 seat?

20 A. That's correct.

21 Q. Did anybody make any observations of him reaching under  
22 the seat?

23 A. Nobody reported anything.

24 Q. Okay. And then at some point you started tailing him and  
25 the rest is on the video?

1 A. Yes, it is.

2 Q. The last mile at least?

3 A. Yes, approximately last mile.

4 Q. Okay. But how many miles was it from Packard Road to this  
5 Last Chance bar?

6 A. I'm not sure, sir.

7 Q. I want to call it the last chance saloon like in the old  
8 westerns. Okay. All right. I was just informed that it is  
9 the Last Chance Saloon. Okay.

10 So in any event -- now, did the Niagara County  
11 sheriff issue an appearance ticket or -- or place Mr. Biro  
12 under arrest for possession of a weapon in violation of  
13 Section 265.3 of the New York Penal Code?

14 A. To my knowledge, no.

15 Q. Did they place Mr. Richards under arrest for 265.3 of the  
16 New York Penal Code?

17 A. Niagara County did not.

18 Q. Are you aware of Section 265.3 of the New York Penal Code?

19 A. I don't know New York State code, sir.

20 Q. Are you aware that in New York the Penal Code also  
21 suggests that all people located in a vehicle are presumed to  
22 possess a weapon?

23 **MR. CULLINANE:** Objection, Your Honor.

24 **MAGISTRATE JUDGE ROEMER:** Sustained.

25 **BY MR. STACHOWSKI:**

1 Q. All right. Now, sir, are you sure that this vehicle was a  
2 Dodge Durango?

3 A. Based off the look of it, yes, sir.

4 Q. Do you know if it was a Jeep?

5 A. I don't know if it is a Jeep, sir. I believe it's a Dodge  
6 Durango.

7 Q. Now, some of your other testimony wasn't accurate, was it?

8 A. I don't know what you're referencing, sir.

9 Q. Let me -- this evidence recovery log. Who recovered the  
10 cash?

11 A. The cash was on his person, sir.

12 Q. Who recovered it?

13 A. The FBI; I believe that in the paperwork I'm the  
14 recovering agent.

15 Q. Okay. And you recovered \$449 of U.S. currency?

16 A. That's what's written down on the page, sir.

17 Q. Are you sure you didn't recover \$649 of U.S. currency?

18 A. If that's what's on the page, sir. I can only testify to  
19 that.

20 Q. Now, sir, are you aware -- have you ever looked at the  
21 indictment?

22 A. The indictment, no, sir.

23 Q. Are you aware that in the indictment the paragraph --  
24 strike that.

25 The third forfeiture allegation says that

1 approximately \$649 of U.S. currency seized from Jeffrey  
2 Richards by law enforcement on or about December 14th, 218  
3 (sic)?

4 A. I'm not aware of that, sir. I haven't looked at the  
5 indictment. However, I believe that there could have been  
6 cashed seized from the apartment itself.

7 Q. Now, sir, you say that -- you said it in the beginning  
8 that you were fearful that Mr. Richards might have an  
9 explosive device in that vehicle; is that correct?

10 A. I don't know if I said if it was in the vehicle or not,  
11 sir.

12 Q. Well, did you say that you were fearful that there might  
13 be a bomb or explosive device?

14 A. Of an explosive device, yes, sir.

15 Q. Okay. Now, did you see -- did anyone tell you that Mr.  
16 Richardson (sic) was carrying any objects to the car?

17 A. That was not described.

18 Q. And you later learned that the -- that the vehicle was  
19 rented --

20 **MAGISTRATE JUDGE ROEMER:** Mr. Stachowski, you said  
21 "Richardson." I think you met Mr. Richards, correct?

22 **MR. STACHOWSKI:** Richards. Did I say Richardson?

23 **MAGISTRATE JUDGE ROEMER:** Okay, I'm sorry, I didn't  
24 mean to interrupt you. Go ahead and ask your next question.  
25 I just wanted to make it clear.

1                   **MR. STACHOWSKI:** Mr. Richards is what I meant.

2                   Okay.

3                   **BY MR. STACHOWSKI:**

4                   Q.    Now, did you -- I have a client named Richardson, so it  
5                   probably came into my head. I apologize.

6                               So did anybody see him carrying anything to the  
7                   car?

8                   A.    It was not called out over the radio, no.

9                   Q.    Now, were you -- you found out later that Mr. Biro's wife  
10                  rented this vehicle?

11                  A.    I found this out later, yes.

12                  Q.    Was there any reason to believe that Mr. Biro would have  
13                  explosive devices?

14                  A.    I don't have any source reporting on Mr. Biro.

15                  Q.    Mr. Biro wasn't under investigation by the FBI, was he?

16                  A.    I can't say whether he was or was not, sir. He was not  
17                  part of any investigation that I personally had.

18                               **MR. STACHOWSKI:** I have no further questions.

19                               **MAGISTRATE JUDGE ROEMER:** Mr. Cullinane?

20                               **MR. CULLINANE:** Thank you.

21                                       **REDIRECT EXAMINATION**

22                   **BY MR. CULLINANE:**

23                  Q.    Agent, you stated that you made a probable cause arrest of  
24                  Mr. Richards; is that correct?

25                  A.    That's correct.



1 Q. What was the probable cause based on?

2 A. Probable cause was based on that there was narcotics  
3 inside of the apartment; that he had a firearm on him at the  
4 same time; and that there was also bomb making material as  
5 well as other guns inside of the residence.

6 Q. Now, you stated there's probable cause that he had a gun  
7 on him; is that correct?

8 A. That's correct.

9 Q. Was there multiple source reporting regarding him with a  
10 firearm?

11 A. Yes, there was.

12 Q. And, generally speaking, was that information fresh or  
13 recent when provided to law enforcement?

14 A. It was, sir.

15 Q. So did you have reason to believe he had a firearm on him  
16 at that time?

17 A. I did, sir.

18 Q. But no other law enforcement officer had reported to you  
19 that he or she had seen a firearm on Mr. Richards; is that  
20 correct?

21 A. No one reported that, no.

22 Q. Now, you were asked if he was -- if he committed a crime  
23 when he walked out of the car. Do you recall that?

24 A. I do.

25 Q. Was there an ongoing criminal investigation into

1 Mr. Richards?

2 A. Yes, there was.

3 Q. Regarding what?

4 A. Regarding bomb making.

5 Q. And drugs?

6 A. And drugs.

7 Q. And firearms?

8 A. Yes, sir.

9 Q. On the screen it has been stopped at the 10 minute 17  
10 second mark. And the rear hatch is open; is that correct?

11 A. It is.

12 Q. And you were asked some questions about a fellow law  
13 enforcement officer opening a compartment within that rear  
14 hatch?

15 A. Yes.

16 Q. Now, are you a car expert?

17 A. I am not.

18 Q. All right. So if it's a Dodge or a Jeep, are you certain  
19 of that?

20 A. I am not certain. I'm not an expert.

21 Q. Okay. Are you aware, though, through your training and  
22 experience that vehicles have compartments in them?

23 A. Yes.

24 Q. And are you aware that persons can modify compartments in  
25 their cars?

1 A. I am aware of that, yes.

2 Q. How are you aware of that?

3 A. Based off my training and experience dealing with  
4 narcotics it's common to see compartments or traps inside of  
5 vehicles.

6 **MR. STACHOWSKI:** Judge, I'm going to have to object.  
7 This is a rental vehicle.

8 **MAGISTRATE JUDGE ROEMER:** I'm not sure he knew that  
9 at the time or any law enforcement making the stop knew that.

10 **MR. STACHOWSKI:** Okay. All right.

11 **MAGISTRATE JUDGE ROEMER:** So I'll overrule the  
12 objection.

13 **BY MR. CULLINANE:**

14 Q. Agent Weis, through your training and experience are you  
15 aware that persons involved in criminal activities will modify  
16 even a rental vehicle?

17 A. Yes.

18 Q. And have you been aware of that occurring in the past?

19 A. I have.

20 Q. Whether in this district or elsewhere?

21 A. That's correct.

22 Q. So is it possible that a person could be in this  
23 compartment area?

24 **MR. STACHOWSKI:** Objection, that calls for pure  
25 speculation.

1                   **MR. CULLINANE:** I'll rephrase it.

2                   **MAGISTRATE JUDGE ROEMER:** Okay.

3 **BY MR. CULLINANE:**

4 Q.   Is it protocol of the SWAT team and FBI to search  
5 compartments in which a person could be located?

6 A.   Yes.

7 Q.   And does that include compartments that could fit a larger  
8 person?

9 A.   Yes.

10 Q.   Or even a smaller person?

11 A.   That's correct.

12 Q.   You were asked about the difference between the cash  
13 recovered from his person at that time --

14 A.   Mm-hmm.

15 Q.   -- and the indictment?

16 A.   Yes.

17 Q.   Did you draft the indictment?

18 A.   I did not.

19 Q.   All right. In fact, who drafted it?

20 A.   I believe the U.S. Attorney's Office does.

21 Q.   And the grand jury returned this?

22 A.   Yes, they did.

23 Q.   Okay. Are you aware that possibly other money was  
24 recovered at his home?

25 A.   Yes.

1 Q. And that's why the aggregate is different than what was  
2 found just at the encounter at Dave's Last Chance saloon?

3 A. That's correct.

4 **MR. CULLINANE:** One second, Your Honor.

5 **BY MR. CULLINANE:**

6 Q. Agent, just a couple other additional questions. Why were  
7 Mr. Richards and the passenger removed from the car that day?

8 A. To separate them and to put them into custody.

9 Q. And is this for the safety of anyone?

10 A. It is.

11 Q. Who is it for the safety of?

12 A. For safety of law enforcement officers and potentially  
13 anybody that was back at Packard Court living in the other  
14 apartments.

15 Q. And anyone else who may have been at Dave's Last Chance  
16 saloon?

17 A. That's correct.

18 **MR. CULLINANE:** Agent, those are all my questions  
19 for today. Thank you.

20 **MR. STACHOWSKI:** Judge, I did forget one question  
21 earlier.

22 **MAGISTRATE JUDGE ROEMER:** Sure.

23 **MR. STACHOWSKI:** And I apologize.

24 **RECROSS-EXAMINATION**

25 **BY MR. STACHOWSKI:**

1 Q. Was this gun tested for DNA?

2 A. I am not sure, sir. Someone else submitted it to whatever  
3 lab it goes to.

4 Q. So you're not aware of any DNA tests on -- on the gun  
5 itself or the magazine?

6 A. I wrote the affidavit, sir, and I was present for this  
7 arrest. I don't know what happened afterwards for any part of  
8 this investigation.

9 **MR. STACHOWSKI:** Then I have no further questions.

10 **MAGISTRATE JUDGE ROEMER:** I got a couple of  
11 questions, Agent. You say you had information that the  
12 defendant when he left his house he would usually carry a .45  
13 caliber handgun?

14 **THE WITNESS:** Yes, Your Honor.

15 **MAGISTRATE JUDGE ROEMER:** Did you have any  
16 information that it was illegal for him to do that? Was there  
17 any check done to see if he had a registered gun? Had a  
18 permit for carry or anything like that?

19 **THE WITNESS:** I believe that there was checks done,  
20 completed by the case agent.

21 **MAGISTRATE JUDGE ROEMER:** And what was the result of  
22 those?

23 **THE WITNESS:** I'm not actually sure, Your Honor. I  
24 don't believe he was a felon. Again, I'm not sure if he  
25 actually had a license for it, Your Honor.

1                   **MAGISTRATE JUDGE ROEMER:** But it would be illegal I  
2 guess in a sense if he was involved in drug dealing, he's not  
3 allowed to have a weapon to do that?

4                   **THE WITNESS:** That's correct.

5                   **MAGISTRATE JUDGE ROEMER:** Okay. You mentioned that  
6 one of the suspicions regarding his home was he was a bomb  
7 maker?

8                   **THE WITNESS:** Yes, Your Honor.

9                   **MAGISTRATE JUDGE ROEMER:** And he did that at this  
10 home? At his home?

11                  **THE WITNESS:** Yes, Your Honor.

12                  **MAGISTRATE JUDGE ROEMER:** Okay. And then you talked  
13 about the ability to detonate that device?

14                  **THE WITNESS:** Yes, sir.

15                  **MAGISTRATE JUDGE ROEMER:** Using a cell phone?

16                  **THE WITNESS:** Yes, sir.

17                  **MAGISTRATE JUDGE ROEMER:** Okay. I know I couldn't  
18 use my cell phone to detonate a device. How would one know  
19 that or how would -- does that require any type of special  
20 training or is that information available in the public arena  
21 or --

22                  **THE WITNESS:** It is available, Your Honor. There  
23 are anarchist cookbooks; there's other material that's been  
24 put out by terrorist groups internationally stating how to do  
25 such things.

1           **MAGISTRATE JUDGE ROEMER:** And do you have an idea of  
2 what type of distance can you be from a bomb in order to set  
3 it off remotely with a cell phone?

4           **THE WITNESS:** Not for certain, Your Honor, no.

5           **MAGISTRATE JUDGE ROEMER:** Okay. Any ballpark guess?  
6 Could it be miles away?

7           **THE WITNESS:** It could be miles, Your Honor. If  
8 it's a cell phone, it could be miles.

9           **MAGISTRATE JUDGE ROEMER:** Okay. And did you  
10 testify -- did I hear correctly that one of your concerns was  
11 the possibility of a remote detonation of this bomb while  
12 executing the search warrant?

13           **THE WITNESS:** Yes, Your Honor.

14           **MAGISTRATE JUDGE ROEMER:** Okay. Any other  
15 questions?

16           **MR. STACHOWSKI:** No, Your Honor.

17           **MR. CULLINANE:** No, Your Honor. Thank you.

18           **MAGISTRATE JUDGE ROEMER:** You can step down, Agent.  
19 Thank you very much.

20           (WHEREUPON, the witness was excused).

21           **MAGISTRATE JUDGE ROEMER:** Okay, I have a matter on  
22 at 1. So we'll take a break. I know, Mr. Stachowski, you  
23 said you needed a break.

24           **MR. STACHOWSKI:** I do.

25           **MAGISTRATE JUDGE ROEMER:** Correct? We'll start



1 again -- Rosalie, what do you think? 1:30? 1:30. And you  
2 have -- your other witness is here?

3 **MR. CULLINANE:** He's outside. Thank you, Judge.

4 **MAGISTRATE JUDGE ROEMER:** Okay.

5 (WHEREUPON, there was a pause in the proceeding.)

6 **THE CLERK:** We are back on the record in U.S.A.  
7 vs. Jeffrey Richards, case No. 19-CR-106, evidentiary hearing.

8 **MAGISTRATE JUDGE ROEMER:** Do you want to call your  
9 next witness?

10 **MR. CULLINANE:** Yes, thank you very much, Judge. At  
11 this time the Government calls FBI Special Agent Mark  
12 Schirching.

13 **GOVERNMENT'S WITNESS, MARK SCHIRCHING, SWORN**

14 **DIRECT EXAMINATION**

15 **THE WITNESS:** My name is Mark Schirching. First  
16 name, M-A-R-K. Last name, S-C-H-I-R-C-H-I-N-G.

17 **MR. CULLINANE:** Thank you, Judge.

18 **BY MR. CULLINANE:**

19 Q. Good afternoon.

20 A. Good afternoon.

21 Q. Where are you currently employed?

22 A. With the FBI.

23 Q. What is your title?

24 A. Currently I'm a special agent.

25 Q. Agent Schirching, how long have you been with the FBI?

1 A. Just over 14 years.

2 Q. And prior to beginning work as a FBI special agent, where  
3 were you employed?

4 A. With the U.S. Border Patrol and the U.S. Immigration  
5 Service.

6 Q. And where were you posted for those positions?

7 A. I had three postings: One in Texas; one in Toronto,  
8 Ontario, Canada; and one down in Arizona.

9 Q. And as an FBI special agent, have you always been in  
10 Buffalo?

11 A. I was in Rochester for approximately five years, but  
12 always assigned to the Buffalo office.

13 Q. Okay. And always part of the Western District of  
14 New York?

15 A. Correct.

16 Q. All right. Can you please describe the training you  
17 completed in order to become a special agent?

18 A. Approximately five months of the FBI Academy where we  
19 learned legal training as well as tactical training.

20 Q. What are your current job responsibilities?

21 A. Currently I am the senior team leader of the SWAT team for  
22 the Buffalo office. I'm also the principal firearms  
23 instructor for the field office.

24 Q. How long have you been in each of those roles?

25 A. Since October of 2019.

1 Q. Prior to that where were you assigned?

2 A. To the Safe Streets Task Force.

3 Q. All right. And what are the responsibilities of the Safe  
4 Streets Task Force?

5 A. To investigate gang crime and violent crime in the Western  
6 District of New York.

7 Q. And how long were you in that group for?

8 A. Since 2011.

9 Q. And through that group did you have experience and  
10 training regarding narcotics, firearms and gangs?

11 A. I did.

12 Q. Now, you're a senior team leader for the SWAT team; is  
13 that correct?

14 A. That's correct.

15 Q. How long have you been a member of the SWAT team now?

16 A. Approximately 13 years.

17 Q. Okay. And, generally speaking, when is the SWAT team  
18 used?

19 A. In general for high-risk search warrants, high-risk arrest  
20 warrants and then emergency situations.

21 Q. And you're now the senior team leader. What has been your  
22 role on the SWAT team prior to that?

23 A. For the past several years I was the assistant team leader  
24 of the team.

25 Q. Now, you described the SWAT team being used for high-risk

1 situations; is that correct?

2 A. That's correct.

3 Q. Can you talk about how the calculus is made to determine  
4 that someone or a place is a high risk?

5 A. There's a number of calculus. One is criminal history.  
6 Another is the nature and severity of the crime. Another one  
7 would be if they were believed to be armed and dangerous.  
8 More recently is the concern over the possession of fentanyl  
9 which could cause problems if not handled properly. So  
10 there's a variety of factors that are considered.

11 Q. And armed and dangerous could include what types of  
12 issues?

13 A. Any -- any type of weapon that might be used against law  
14 enforcement or someone else. So it could be a firearm, it  
15 could be an explosive, it could be a vehicle.

16 Q. Now, during the course of working both in Buffalo and  
17 Rochester and particularly the Safe Streets Task Force, did  
18 you become familiar with outlaw motorcycle gangs?

19 A. I did.

20 Q. Which ones?

21 A. I had occasion to work an investigation of the Hell's  
22 Angels Motorcycle Club, and I also was on the squad when the  
23 Kingsmen Motorcycle Club case was being worked. So I was  
24 involved with many of those arrests and search warrants.

25 Q. All right. What's your understanding of the investigation

1 regarding the Kingsmen?

2 A. They were a violent outlaw motorcycle club.

3 Q. Agent Schirching, have you been involved in the execution  
4 and planning of search warrants?

5 A. I have.

6 Q. Approximately how many?

7 A. Dozens and dozens.

8 Q. Okay. And when executing a search warrant does law  
9 enforcement take into account any factors regarding the  
10 presence of a target person at the target residence?

11 A. Absolutely.

12 Q. How so?

13 A. Depending on the nature of the information, if the person  
14 has access to weapons or other means of harming themselves,  
15 the law enforcement officers entering the residence or others  
16 in the vicinity, we would -- we would deal with that  
17 accordingly.

18 In a situation where members of the public might be  
19 harmed or injured due to the actions or reaction of the target  
20 subject at the location, we may not want to arrest them in  
21 that particular location.

22 Q. Why is that?

23 A. They could -- they could harm innocent members of the  
24 public.

25 Q. And, Agent, does that include a person involved in bomb

1 making?

2 A. Absolutely.

3 Q. Do you have some training and experience regarding bomb  
4 making?

5 A. We do. We regularly receive information on explosives, in  
6 particular if there were booby traps, things of that nature to  
7 look out for.

8 Q. Well, Agent, I'd like to direct your attention to December  
9 of 2018. At that time were you working as an FBI special  
10 agent here in Buffalo?

11 A. I was.

12 Q. And at that time did you become familiar with a person  
13 named Jeffrey Richards?

14 A. I did.

15 Q. And how is it you became familiar with him?

16 A. As the assistant team leader of the SWAT team, I was asked  
17 to prepare an operations plan and assist with preparing an  
18 operations plan to search Mr. Richards' residence.

19 Q. And what did you learn about Mr. Richards at that time?

20 A. I learned that the warrant that was being applied for had  
21 probable cause in it that Mr. Richards had improvised  
22 explosive devices as well as firearms and narcotics.

23 Q. Did you also learn some information about his background?

24 A. I did. I don't remember in particular his criminal  
25 history, but I remember he had an arrest record. I also

1 remember that he had ties to the Kingsmen Motorcycle Club as  
2 well as white supremacist type groups.

3 Q. And are those factors that become important for a SWAT  
4 team leader or assistant leader to take into consideration?

5 A. Absolutely.

6 Q. And why is that?

7 A. It goes to their propensity for maybe having an anxiety or  
8 a desire to harm law enforcement.

9 Q. And what do you base that on?

10 A. History of those organizations, the nature of what they  
11 stand for and their actions that they've taken not only here,  
12 but nationwide.

13 Q. So at some point in December of 2018 you were asked to  
14 start assisting with preparations for the planning of a search  
15 warrant; is that correct?

16 A. That's correct.

17 Q. And do you recall if the search warrant was executed on  
18 December 14th, 2018?

19 A. That's correct.

20 Q. Do you know when you were first approached or talked to  
21 about Jeffrey Richards?

22 A. Some time early that day.

23 Q. Okay. And as a result of this request or reaching out to  
24 you, what starts to happen in that process?

25 A. We start to get information on the residence; any

1 information the case squad might have that's relevant to us  
2 for preparing; we would look at what the pattern might be of  
3 when they come and go, things like that.

4 Q. Now, as you're preparing for the execution of a search  
5 warrant, did you become aware that surveillance was being  
6 conducted on Mr. Richards?

7 A. I did.

8 Q. What did you learn at that time?

9 A. I learned that surveillance was being conducted at his  
10 residence and they believed that he was at the residence.

11 Q. And subsequently what did you learn about Mr. Richards  
12 being at the residence?

13 A. That he was there and I believe there were other people  
14 present as well. Also, that the residence was in a -- an  
15 apartment like complex, so the residences were very close and  
16 even attached in the same buildings.

17 Q. Now, Agent, at some point did you become aware that  
18 Mr. Richards had departed the residence?

19 A. We did. We -- we had planned to wait until he left the  
20 residence due to our belief that it was more dangerous to  
21 approach the residence with him inside.

22 So we had kind of backed off the residence and  
23 waited for surveillance to call out that he had departed.

24 Q. Where are you generally at this time when you said you're  
25 sort of waiting for him to leave the residence and depart that



1 area?

2 A. We were several miles away just waiting for the  
3 surveillance to follow him and see which direction he might be  
4 heading, and then ultimately we staged ourselves at a location  
5 where a vehicle stop was going to be executed.

6 Q. All right. So safe to say there's sort of a team  
7 conducting surveillance and you and some other people are  
8 waiting elsewhere for the word?

9 A. That's correct.

10 Q. Whatever that might be?

11 A. That's correct.

12 Q. And how are you in communication with the team doing the  
13 surveillance?

14 A. Radio communication.

15 Q. Okay. And is that sort of protocol?

16 A. Yes.

17 Q. All right. And, in fact, you are now a senior team member  
18 and you've helped teach these things; is that correct?

19 A. That's correct.

20 Q. And even during that time were you also helping to teach  
21 other members?

22 A. I was.

23 Q. All right. So these are protocols that you're familiar  
24 with and, in fact, you helped establish and teach for fellow  
25 law enforcement officers?

1 A. That's correct.

2 Q. All right. Now, at some point you receive -- did you  
3 receive notice that Mr. Richards had left the residence?

4 A. We did.

5 Q. And what happened then?

6 A. We made plans to effect taking Mr. Richards into custody  
7 upon a vehicle stop that was going to be conducted at a  
8 predetermined location.

9 Q. All right. And what happened then?

10 A. The vehicle was stopped, we were successful in getting  
11 Mr. Richards out of the vehicle and into custody, and we then  
12 proceeded to clear the vehicle to make sure there were no more  
13 occupants inside.

14 Q. And to be clear, were you part of the group of -- were you  
15 part of a car -- in a car that followed him to -- followed the  
16 car that Mr. Richards was in to the stop location?

17 A. I was at the stop location. I don't know if we followed,  
18 but I was shortly behind.

19 Q. Okay. Now, at that time was a firearm recovered from the  
20 vehicle?

21 A. There was.

22 Q. All right. How did that happen?

23 A. I ended up in a position where after Mr. Richards and  
24 another occupant were both taken into custody and secured, I  
25 then cleared the vehicle, meaning I used the technique that I

1 panned across the door which was left open to get a look  
2 inside and then hopefully get the best look you can from a  
3 distance to make sure no one else is in the vehicle.

4           Vehicles pose a special problem where there's many  
5 hiding spaces; people can hide in very small spaces  
6 surprisingly in vehicles. And as I was panning across to the  
7 front of the vehicle I was able to see the handle to a pistol  
8 underneath the driver's seat.

9 Q. Let me ask you a couple questions about that, Agent.  
10 Prior to the car being stopped -- the car with Mr. Richards  
11 being stopped, had you received any notice or had received any  
12 information from other law enforcement officers that  
13 Mr. Richards may be in possession of a firearm?

14 A. Yes, the case squad had put out to the SWAT team members  
15 that they had received information that he had a firearm  
16 inside the vehicle.

17 Q. All right. And was this information -- well, is it your  
18 understanding this was information that had come from  
19 different sources?

20 A. Yes, I know the case squad got it from a source of  
21 information. I'm not sure who.

22 Q. Okay. You only -- let me ask you this then, Agent : Were  
23 you part of the investigation of Mr. Richards?

24 A. I was not.

25 Q. All right. So you received information from whom?

1 A. The case squad. I'm not sure exactly which agent, but it  
2 was from the case that the -- the squad that was working the  
3 investigation.

4 Q. Okay. So this is from your fellow officers?

5 A. Correct.

6 Q. Regarding Mr. Richards?

7 A. Correct.

8 Q. Not from any sources that you were working with?

9 A. No.

10 Q. Okay. All right. Now, you stated that you found the  
11 firearm while clearing the car because people can hide in  
12 spaces in cars?

13 A. Correct.

14 Q. Do you have some experience with this personally?

15 A. I do.

16 Q. Well, I say "personally," but professionally. What is  
17 your experience with this professionally?

18 A. Numerous SWAT operations as well as my time in the  
19 U.S. Border Patrol where vehicles were routinely used to  
20 smuggle people. I've found people hiding in the smallest  
21 spaces: In the back seats of cars, underneath panels of cars  
22 that looked like they're supposed to be there, but it turns  
23 out they were added.

24 So we take cars very seriously because of their  
25 inherent dangerousness because they can be moved.

1 Q. And you say you found persons in different spots of cars.  
2 Were these persons of average height and size?

3 A. They were.

4 Q. Some people who were smaller size?

5 A. Of course.

6 Q. And some people who were larger size?

7 A. Some larger people as well, yes.

8 Q. And you're a fairly tall guy. How tall are you?

9 A. About six four.

10 Q. Have you found people who are not so much shorter than you  
11 in small spots in cars?

12 A. We have.

13 Q. Okay. So on this date you recovered a firearm; is that  
14 correct?

15 A. That's correct.

16 Q. And did you receive some contact from me regarding this  
17 case?

18 A. I did.

19 Q. And what did you learn about this case?

20 A. I learned that the -- the -- one of the officers on the  
21 scene, either in the patrol car or on his person, had a  
22 recording device as part of the standard procedures from -- I  
23 believe it was the Niagara County Sheriff's Office, and it  
24 recorded the clearing of the car and some audio from me.

25 Q. All right. When did you learn this?

1 A. Last week Thursday.

2 Q. Okay. So prior to that date you were not aware that you  
3 had been recorded?

4 A. I had no awareness of it.

5 Q. Okay. All right. Did you have the opportunity to watch  
6 that video?

7 A. I did.

8 Q. All right. When did you watch that?

9 A. On Friday with you.

10 Q. Okay. And did you watch the entire video?

11 A. No, not the entire video.

12 Q. All right. Did you watch the portion of it -- well, which  
13 portion of the video did you watch?

14 A. The portion where Mr. Richards is called out of the  
15 vehicle, taken into custody, and then us clearing the vehicle  
16 making sure there's no additional occupants and me recovering  
17 the firearm.

18 Q. Okay.

19 **MR. CULLINANE:** Your Honor, at this time I'm going  
20 to place on the screen Grand Jury Exhibit No. 2, which is in  
21 evidence. And since the Court is familiar with this video,  
22 I'm going to start it at approximately the six minute and 12  
23 second mark.

24 **THE CLERK:** Can't do both.

25 **MR. CULLINANE:** Okay, if I can just have the video

1 up?

2 **THE CLERK:** You want the video?

3 **MR. CULLINANE:** Yeah, that would be fine. Thank  
4 you, Rosalie.

5 **THE CLERK:** Mm-hmm.

6 **BY MR. CULLINANE:**

7 Q. All right, Agent Schirching, can you see the video on your  
8 screen?

9 A. I can.

10 Q. I'm going to hit play at this point.

11 (WHEREUPON, the video was played).

12 **BY MR. CULLINANE:**

13 Q. Actually, you know what? I'm gonna back it up just  
14 shortly to approximately the six minute mark. Start it at  
15 5:59.

16 (WHEREUPON, the video was played).

17 **BY MR. CULLINANE:**

18 Q. Agent Schirching, I stopped it at the six minute and 10  
19 second mark. Can you tell us what just occurred there?

20 A. I believe that was the passenger of the vehicle that was  
21 secured.

22 Q. Okay. And at this point has Mr. Richards already been  
23 removed from the vehicle?

24 A. Yes.

25 Q. And where are you in relation to the camera and the car

1 that was stopped?

2 A. I am to the left of the vehicle that's farthest left in  
3 this picture.

4 Q. Okay. Let me continue playing from the six minute and 10  
5 second mark.

6 (WHEREUPON, the video was played).

7 **BY MR. CULLINANE:**

8 Q. Now, I've stopped it at the six minute and 53 second mark.  
9 Are you able to observe this?

10 A. I am.

11 Q. What are we seeing here?

12 A. That is me and two other agents clearing the vehicle. I  
13 am the agent that's farthest forward. I believe my flashlight  
14 might be on in that particular image right there.

15 Q. You're on the other side from this image of the driver's  
16 side door?

17 A. Correct.

18 Q. All right. At this point have you helped out at all or  
19 assisted at all with the arrest or taking into custody of  
20 either Mr. Richards or the passenger?

21 A. Not -- not physically, no.

22 Q. What were you doing before that?

23 A. Covering --

24 Q. I should say, excuse me, while that was going on?

25 A. Directing a little bit of traffic. As an assistant team



1 leader I'm responsible for coordinating, making sure  
2 everyone's in the right spot as well as providing some  
3 coverage if anything were to go, you know, sideways with the  
4 arrest.

5 Q. Okay. Let me continue from the six minute 53 second mark.  
6 (WHEREUPON, the video was played).

7 **BY MR. CULLINANE:**

8 Q. Now, I've stopped it at the seven minute and 16 second  
9 mark. Can you please describe what we've just observed?

10 A. The other two agents cleared the back seat ensuring there  
11 was no one hiding in the back seat, and I remained up front.  
12 My recollection is I knew that firearm was there, I saw it,  
13 and I didn't want to take my eyes off it until we were sure  
14 there was no one else in that vehicle.

15 Q. To be clear, you say you knew the firearm was there. Did  
16 you first observe the firearm?

17 A. Yes, as I cleared across that open door I was able to see  
18 that handle of the firearm.

19 Q. Okay. All right. And what is the purpose of clearing --  
20 of what the other officers are doing at this time?

21 A. To make sure there's no one in the vehicle we didn't know  
22 about.

23 Q. Now, at that time did you have any information about how  
24 many people were in the vehicle?

25 A. I believe we received information there was Mr. Richards

1 and another person, but I don't recall specifically.

2 Q. Even if you received that information, do you still -- do  
3 you still act as if there could be others in the vehicle?

4 A. Absolutely. It's our standard operating procedure  
5 whenever clearing a vehicle we make sure there's no one else  
6 left in it. We don't -- we don't want a surprise of someone  
7 laying in wait for us.

8 Q. Let me continue from the seven minute and 16 second mark.  
9 (WHEREUPON, the video was played).

10 **BY MR. CULLINANE:**

11 Q. All right, I stopped it at the seven minute and 46 second  
12 mark. What are we observing now?

13 A. The remaining two agents cleared the rear hatch of the  
14 vehicle, again, because someone could be hiding back there; I  
15 relocated my position as I did that as to not be in front if a  
16 fire fight were to break out and then I believe I went back  
17 because I still knew that firearm was there and didn't want to  
18 lose eye contact with it or at least have someone with eye  
19 contact on it.

20 Q. Now, at this point has the car been deemed preliminarily  
21 cleared of any persons?

22 A. Preliminarily, yes. You know, it's not uncommon for us  
23 just to double check to make sure there's nothing that we  
24 missed.

25 Q. Let me continue from the seven minute and 46 second mark.

1 (WHEREUPON, the video was played).

2 BY MR. CULLINANE:

3 Q. I stopped it at the seven minute 55 second mark. Can you  
4 please describe what we just observed there?

5 A. One of the other agents went up, just double checking,  
6 making sure that compartment, you know, couldn't contain any  
7 people. You never know, vehicles can be modified.

8 We're not familiar with every single vehicle. A  
9 vehicle could have a deeper compartment than you think it  
10 could. So I would -- I would guess that that agent was just  
11 looking.

12 Q. Could cars also be modified?

13 A. Absolutely.

14 Q. Are you familiar with that?

15 A. Oh, absolutely.

16 Q. How about rental cars?

17 A. Any type of car can be modified.

18 Q. At this point have you provided notice to other law  
19 enforcement officers that you recovered a firearm?

20 A. My recollection is as soon as I saw it I put it out over  
21 the radio so that everyone knew that there was a firearm on  
22 the floor in the front.

23 Q. And to be clear, you said you put it over the radio, how  
24 does that occur?

25 A. We -- all the SWAT operators have communications on them,

1 radio attached, and it goes to a headset and push-to-talk and  
2 I pushed the button on my vest and relayed it to the entire  
3 team.

4 Q. And you're doing that almost contemporaneously as you're  
5 seeing the firearm; is that the case?

6 A. Probably pretty close. I probably waited until my clear  
7 was done, but once it was done and I was satisfied I didn't  
8 have any -- anyone to deal with, then I put it out.

9 Q. All right. Let me continue from the seven minute 55  
10 second mark.

11 (WHEREUPON, the video was played).

12 **BY MR. CULLINANE:**

13 Q. I'm stopping at the eight minute and 35 second mark. Can  
14 you please describe what we just saw?

15 A. My recollection is I had called for someone from the  
16 search team to come up and take a photo of it before I moved  
17 it. I am a firearms instructor, so before a firearm is turned  
18 over to anyone to put into evidence, it's cleared by a  
19 firearms instructor to make sure that it's safe.

20 But I did not want to touch it or move it until a  
21 photograph was taken. So a person came up, I'm not sure who  
22 it was, and they took a photograph.

23 Q. Okay. By -- up to this point have you entered the car at  
24 all?

25 A. No.

1 Q. Okay. So it's strictly your observation of the gun from  
2 outside the car?

3 A. Correct.

4 Q. You've remained outside the car this time?

5 A. Correct.

6 Q. Let me continue from the eight minute and 35 second mark.

7 (WHEREUPON, the video was played).

8 **BY MR. CULLINANE:**

9 Q. Okay, I've stopped it at the ten minute and 22 second  
10 mark. Can you please describe what we just watched?

11 A. After the photos of the firearm were taken, I went into  
12 the vehicle, I retrieved the firearm, I made sure it was safe  
13 and empty. My recollection is it didn't have a locking  
14 mechanism on it for the slide to lock back, which is a way for  
15 everyone to visually see that it's empty, so I remember either  
16 asking for something like a pen cap or something to put into  
17 the chamber so that whoever took custody of it would know that  
18 it had been cleared.

19 And then I walked back with the weapon and the  
20 magazine that had ammunition in it that I recovered.

21 Q. Was the weapon in one hand?

22 A. Yes.

23 Q. Was the magazine in your other hand?

24 A. That's correct.

25 Q. Is that protocol?

1 A. Not necessarily, but it's just the way I carried it.

2 Q. Okay. And, Agent, were you -- you were certified or  
3 qualified to complete that task on scene?

4 A. That's correct.

5 Q. And how is it you became qualified for that purpose?

6 A. Being a firearms instructor in the FBI.

7 Q. Let me continue playing from the ten minute 22 second  
8 mark.

9 (WHEREUPON, the video was played).

10 **BY MR. CULLINANE:**

11 Q. I've stopped it at the 11 minute and 22 second mark.  
12 Agent Schirching, can you please describe what we've observed  
13 here since we last stopped the video?

14 A. I went off camera -- you can't see me anymore, I'm not  
15 sure where I was standing, but you can hear me, and I hear  
16 myself explaining to the person I turned the firearm over to  
17 that I put something inside the chamber because it wouldn't  
18 lock to the rear, and I explained to them for their report  
19 purposes to note that I saw it in plain view, that I did not  
20 search the vehicle.

21 I -- at no time did I search the vehicle. I simply  
22 saw it in plain view, and obviously at that point we had to  
23 recover that weapon for safety reasons.

24 Q. And you state that you saw it in plain view?

25 A. Correct.

1 Q. While doing what?

2 A. While clearing the vehicle.

3 Q. All right. Agent, did you return to the car again?

4 A. I did not.

5 Q. All right. And why is that?

6 A. I had no further business with that vehicle. We ended up  
7 going to Mr. Richards' residence and completing the search  
8 there.

9 Q. All right. So your task or your responsibilities here  
10 were completed at the time you cleared the car?

11 A. Correct.

12 Q. All right. What happened to the firearm and the magazine?

13 A. They were placed into evidence after I turned them over to  
14 the search team.

15 Q. Was that at the scene?

16 A. Yes.

17 Q. All right. So you had possession of the firearm and  
18 magazine for how long?

19 A. A matter of maybe a minute or two.

20 Q. Okay. Very quick time? Very brief?

21 A. Correct.

22 **MR. CULLINANE:** Rosalie, if I can use the ELMO now?

23 **THE CLERK:** Mm-hmm.

24 **MR. CULLINANE:** Thank you.

25 **BY MR. CULLINANE:**

1 Q. Agent Schirching, I'm placing on the ELMO what's in  
2 evidence as Government's Exhibit 3. I'll zoom in. Agent, are  
3 you familiar with this document?

4 A. I am.

5 Q. And what is this?

6 A. That's the photo that was taken in my presence of the  
7 firearm as it lay underneath the seat of the vehicle.

8 Q. All right. And you have reviewed this document, this  
9 picture before today?

10 A. I have.

11 Q. Okay. And what does it show?

12 A. It shows the floor of the vehicle that Mr. Richards was  
13 in, and the firearm underneath or partially underneath the  
14 seat.

15 Q. Okay. And you say "partially." Part of it is underneath  
16 the seat?

17 A. Correct.

18 Q. And part of it is where?

19 A. In plain view.

20 Q. And is this how you saw it on that date?

21 A. It is.

22 Q. Agent, one second please. Agent Schirching, no further  
23 questions right now. Thank you.

24 **MAGISTRATE JUDGE ROEMER:** Mr. Stachowski?

25 **MR. STACHOWSKI:** Yes.



**CROSS-EXAMINATION**

**BY MR. STACHOWSKI:**

Q. Now, you were the team leader?

A. That day I was the assistant team leader.

Q. Okay. And -- but you were giving instructions to guys and seeing that they were in the right positions?

A. Of course.

Q. Okay. Now, who opened the front door?

A. I don't recall.

Q. Where were you when the front door was opened?

A. I believe I was in the same spot. Likely the front door would have been opened by Mr. Richards as he exited the vehicle and it remained open.

Q. Okay. Now, in -- describe the front compartment.

A. I'm sorry, I'm not sure exactly what you're asking.

Q. What do you see when you look in that vehicle?

A. A vehicle compartment, I have no specific recollection of that vehicle's layout.

Q. Do you know if it had a center console?

A. I can't remember.

Q. You know what kind of vehicle it was?

A. I believe it was a Dodge Durango.

Q. Okay. Now, do you know if it was a Jeep?

A. I don't. I'm only basing that off of watching the video.

I don't have a recollection of the exact vehicle.

1 Q. Okay. Now, were the compartments separate -- strike that.

2 Where was the shifting device?

3 A. I really have no specific recollection.

4 Q. Was it on the floor? In the console?

5 A. As I sit here right now, I couldn't tell you without  
6 reviewing photos.

7 Q. Other than this photograph here of the interior, did you  
8 take any photographs of the interior of the console?

9 A. I didn't personally take any photos.

10 Q. Did anybody?

11 A. I have no idea. No way of knowing that.

12 Q. Now, this seat, you can see part of the seat and a flash.  
13 Was that the flash that was directed down at the gun? It  
14 seems to be a flash you see in the upper -- (inaudible) upper  
15 left-hand side?

16 A. I couldn't tell you. We all have flashlights on our  
17 rifles. It may have been a flashlight illuminating the area.  
18 I couldn't tell you for certain.

19 Q. Okay. So you say that you were clearing the interior.  
20 Well, there were two people sitting in the interior and they  
21 left. What were you clearing?

22 A. For additional people.

23 Q. Under the seats?

24 A. I was clearing the vehicle. I could see in plain view  
25 under the seat. I didn't need to --

1 Q. Well, when you approached the vehicle you were on the  
2 other side of the door and you came around the door?

3 A. Correct.

4 Q. Okay. Because you couldn't see underneath the seat from  
5 where you were first situated, could you?

6 A. I could see under the seat for quite a ways is my  
7 recollection. We go all the way around the door to then see  
8 into the passenger compartment --

9 Q. Okay.

10 A. -- on the passenger side.

11 Q. So you -- you didn't see the steering wheel in the way?

12 A. I'm not sure what you're asking me. My -- my recollection  
13 is I could see the handle of that gun in plain view without  
14 looking for it as I cleared that compartment.

15 Q. Okay. So what side of the seat was it?

16 A. I believe it was fairly close to the middle. I'm not sure  
17 exactly.

18 Q. Now, was there any -- when you look at this photograph,  
19 you see the edge of a carpet with some dirt on it about the  
20 bottom left-hand corner. What part of the rug was that?

21 A. I really -- I have no recollection of what part of the rug  
22 it was. I just know that the handle of that firearm was  
23 sticking out from underneath the seat.

24 Q. Was -- what can you tell me on the right-hand side is this  
25 object with the silvery -- with the hole in it? What is that?

1 A. On the right-hand side?

2 Q. On the bottom right-hand side. The far corner on the  
3 right.

4 A. Bottom right I see the Government Exhibit 3 sticker. I'm  
5 not sure --

6 Q. Okay. Do I have the same picture? Oh, it's turned the  
7 other way, okay. I see, I see, I see, I see, I see. I had  
8 the picture the other way.

9 Do you know what that -- you see the handle of the  
10 gun?

11 A. Correct.

12 Q. Do you know what that silver thing on the left -- it's on  
13 the left side of this picture, what that is?

14 A. I don't know for sure, no.

15 Q. Now, do you know if Mr. Richards was left-handed or  
16 right-handed?

17 A. I have no way of knowing that.

18 Q. Now, this gun is in the far left-hand side of the seat or  
19 the middle?

20 A. I have no way of telling you exactly if it was to the  
21 left, to the right. It looks to me to be about in the middle  
22 the way the floor is contoured, but it's hard to say for  
23 certain.

24 Q. When you look at this little silver thing, is that the  
25 slide that the seat slides on?

1 A. It may be. I'm not certain.

2 Q. Now, if Mr. Richards was sitting in the driver's seat and  
3 he's right-handed, would -- where would he -- would the gun  
4 usually be located?

5 A. There's no way to say that for certain. People can switch  
6 hands very easily.

7 Q. Okay. Do you know if Mr. Richards was ambidextrous?

8 A. I don't, but I train firearms and people can utilize both  
9 hands interchangeably.

10 Q. Okay. Okay. Now, where were you located when you first  
11 observed that?

12 A. My recollection is as I was passing that open door and  
13 clearing, I could see the handle to the gun.

14 Q. So when you got to the front or when you first opened --  
15 when you first passed it?

16 A. I can't tell you for certain. I know it was while I was  
17 passing that door. Which step it was at I couldn't tell you.

18 Q. Well, did you shine your light inside of it?

19 A. I was undoubtedly using my flashlight to search for  
20 people, yes.

21 Q. Well, did you search for people after they opened the back  
22 door or before?

23 A. We search for people the entire time until that vehicle  
24 was cleared.

25 Q. I didn't ask that question. I asked did you search in the

1 front compartment before or after they looked at the back?

2 A. I was the first one to clear the front compartment, that's  
3 correct.

4 Q. Did you radio anyone that you saw anything right at that  
5 moment?

6 A. As I testified earlier, at some point after I was  
7 satisfied I didn't have anything dangerous to deal with, I let  
8 the team know that there was a firearm underneath that seat.

9 Q. Now, in -- in the City of Buffalo when they do radio  
10 communication, they have a log that they call the CAD, which  
11 outlines every single radio communication that was made. Is  
12 there such a thing in the FBI?

13 A. There is not that I know of. And in particular it would  
14 be impossible for the SWAT team to operate that way.

15 Q. So there's no log of anybody making any communications  
16 other than what we hear on this video?

17 A. The system you're referring to requires a repeater and we  
18 work in environments where a repeater just isn't possible.

19 Q. Now, you say when you were walking by, as I said, did you  
20 shine the light on the gun first?

21 A. My recollection is I was looking for people in the vehicle  
22 and I saw that gun in plain view. I was not specifically  
23 looking for a gun.

24 Q. That's not what I asked. I said did -- did you have to be  
25 aided by light to see it?

1 A. I have no specific recollection if I had to be aided by  
2 light.

3 Q. Well, it's hard to see the handle even with the light;  
4 isn't it true?

5 A. I have no way of knowing that.

6 Q. Well, look at the photograph.

7 A. I can see it very clear. I don't know if there was light  
8 there or not or if it was needed or not.

9 Q. Did you see it when you stuck your head inside of the  
10 vehicle?

11 A. You mean again?

12 Q. No. For the first time.

13 A. I saw it from outside the vehicle the very first time  
14 without sticking my head in.

15 Q. Now, looking at this photograph at the left-hand corner,  
16 can you see the silver line that's right adjacent to the gun?

17 A. The bottom left corner?

18 Q. Right here --

19 **THE CLERK:** Mr. Stachowski, you have to --

20 **MR. STACHOWSKI:** I'll bring it with me, okay.

21 **BY MR. STACHOWSKI:**

22 Q. You see the silver thing where the hole and then what  
23 looks like a black rail going back to the seat?

24 A. I see something like that, yes. I don't know if it's a  
25 rail or what it is.

1 Q. Now, do you see the silver line that's there? Do you know  
2 if that's the track that the seat goes on?

3 A. I have no way of knowing that by this picture.

4 Q. Do you know how hot -- do you know how high the rail was  
5 next to the seat in that specific automobile?

6 A. No, I don't. It appears to me that there's definitely  
7 some contour to the floor, but I have no idea how high it was.

8 Q. Well, don't seats in -- in SUVs usually sit up on a  
9 plastic or -- or a metal rail with a plastic cover that --  
10 that sits there next to the door?

11 A. I can't testify as to usually. I don't know.

12 Q. Did -- well, can you testify whether you recollect seeing  
13 such a thing in this vehicle?

14 A. I have no specific recollection other than seeing that  
15 firearm as I cleared that passenger compartment.

16 Q. So if -- so you didn't see a railing blocking it when you  
17 walked by it?

18 A. Mr. Stachowski, I saw the firearm from outside the  
19 vehicle. So there was clearly nothing that blocked my view.

20 Q. And you say that there's no photographs that exist from  
21 the outside looking in of the compartment so you could see how  
22 the seat is in that particular vehicle?

23 A. I have no way of knowing what photographs exist or not.

24 Q. Now, didn't you think it had evidentiary value to  
25 photograph the compartment other than just the gun?



1 A. That was not my role that day.

2 Q. Well, somebody called out to have photographs. What did  
3 you tell them as the assistant team leader that they should  
4 photograph?

5 A. I called out before I moved the firearm to bring someone  
6 up to photograph the firearm. That was it. I was not part of  
7 the investigative team conducting this investigation. I was  
8 there to secure Mr. Richards and -- safely and go back to the  
9 residence to conduct the search warrant at that residence.

10 Q. So there's no photograph that would depict what could be  
11 seen from your first vantage point that you testified about?

12 A. I can't answer that question. I have no knowledge.

13 Q. And you didn't ask for that to be taken?

14 A. The only thing I asked for was someone to take a picture  
15 of it so I could clear the firearm. Leaving it there  
16 uncleared would be dangerous.

17 Q. And was there a time when you stuck your head in and  
18 looked down at it?

19 A. When I went to retrieve it.

20 Q. Okay. Prior to your retrieving it did you stick your head  
21 in there?

22 A. My recollection is I never went in that vehicle until I  
23 went in to retrieve the firearm.

24 Q. Now, when you went to retrieve the firearm, was the  
25 firearm loaded?

1 A. It was.

2 Q. The magazine was in the gun?

3 A. That's correct.

4 Q. And what did you do to clear it?

5 A. I pulled the slide to the rear and then discovered that it  
6 did not have a locking mechanism on it, it was a lower quality  
7 firearm, and I utilized an object to place into the chamber to  
8 give a visual aid to whoever took it from me that it had been  
9 cleared.

10 Q. And then what did you do?

11 A. I walked it over to the person that was taking evidence at  
12 that time, I'm not sure who that was, and I explained to them  
13 the procedure that I had done.

14 Q. Now, when did you take the magazine out of the gun?

15 A. When I locked the slide to the rear -- or before to be  
16 more accurate, I removed the magazine first, then I locked --  
17 well, I couldn't lock the slide to the rear, I attempted to  
18 and then I put something in the chamber to prevent the slide  
19 from going all the way forward.

20 Q. How long did that take?

21 A. Seconds.

22 Q. And is that depicted on the video?

23 A. I believe when you see me go into the vehicle that's what  
24 I'm doing. I'm using a safe direction to clear that firearm.  
25 I didn't know the state that it was in or if it was in any

1 type of unsafe state. So I would have without moving it too  
2 much done it inside the vehicle.

3 Q. Now, do you know if there was any request for DNA on that  
4 firearm?

5 A. I have no way of knowing that.

6 Q. Do you know whose vehicle that was?

7 A. I do not.

8 Q. Do you know if the person who owned the vehicle had the  
9 firearm underneath?

10 A. I have no way of knowing any of that.

11 Q. Do you know if -- if the person who was in the passenger  
12 seat of the vehicle was arrested for possession of a firearm?

13 A. I do not know.

14 Q. Could you tell me what procedure you used, what exactly  
15 did you do to remove the magazine from the pistol?

16 A. I would have looked for the magazine release. Every  
17 semi-automatic pistol has some type of a magazine release. I  
18 would have pressed it and removed the magazine.

19 Q. Where was the magazine release on this gun?

20 A. I can't remember.

21 Q. Do you know what kind of gun it was?

22 A. Off the top of my head, I don't. I would have to review  
23 the evidence.

24 Q. Do you know where the release was located?

25 A. Again, without reviewing the weapon, off the top of my

1 head I do not.

2 Q. Well, isn't it a fact that the magazine was actually out  
3 of the gun and next to it?

4 A. That's not my recollection.

5 Q. Is it the protocol and procedure of the FBI when -- when  
6 there's a location of a firearm in a vehicle and not on a  
7 person to request DNA on the firearm?

8 A. I don't necessarily know it's protocol.

9 Q. How about procedure?

10 A. That would be up to the case agent investigating the case.

11 Q. And who is that?

12 A. I don't know.

13 Q. Was that Mr. Weis?

14 A. I don't know at the time who it was. I don't have any  
15 recollection. I know Mr. Weis was involved in the  
16 investigation, but I'm not sure if he was the case agent.

17 Q. Would the case agent be listed on the evidence recovery  
18 log?

19 A. Not necessarily.

20 Q. Now, sir, as part of your -- your training and as a  
21 firearm instructor, when you recover a firearm isn't it the  
22 procedure of the FBI to request DNA to discover who may have  
23 possessed that weapon?

24 **MR. CULLINANE:** Objection, relevance.

25 **MAGISTRATE JUDGE ROEMER:** I believe he already

1 answered this question, didn't he, Mr. Stachowski?

2 **MR. STACHOWSKI:** Not quite like that (inaudible).

3 **MAGISTRATE JUDGE ROEMER:** Overruled. Go ahead.

4 Answer the question.

5 **THE WITNESS:** Again, you're asking me a specific  
6 procedure. Each case agent takes the steps they deem  
7 necessary at various points of their investigation to acquire  
8 evidence.

9 I don't know what happened in this case. I don't  
10 know if it was requested or not. And there's nothing that I  
11 am aware of that says it has to be done and at what time it  
12 has to be done.

13 **BY MR. STACHOWSKI:**

14 Q. Now, sir, Mr. -- Mr. Richards was taken into custody.  
15 What was the purpose of his being taken into custody?

16 A. We were concerned about the safety of us conducting the  
17 search warrant back at his residence where there was probable  
18 cause to believe he had explosive devices, so for our safety  
19 and the public's safety he was secured until such time that  
20 that residence would be cleared.

21 In addition, I'm not 100% sure, but I believe the  
22 firearm being located in this vehicle may have had something  
23 to do with it as well.

24 Q. Was he placed under arrest when he was handcuffed?

25 A. I would say so, yes.

1 Q. But you didn't place him under arrest?

2 A. I did not.

3 Q. He didn't have an arrest warrant, did he?

4 A. To my knowledge, no.

5 **MR. STACHOWSKI:** I have no further questions.

6 **MAGISTRATE JUDGE ROEMER:** Mr. Cullinane?

7 **MR. CULLINANE:** Thank you, Judge.

8 **REDIRECT EXAMINATION**

9 **BY MR. CULLINANE:**

10 Q. Agent Schirching, you were asked a number of questions  
11 about photographs taken or not taken that day. Was that your  
12 responsibility?

13 A. It was not.

14 Q. All right. What was your responsibility on December 14th,  
15 2018?

16 A. The safety of both Mr. Richards and all the law  
17 enforcement personnel that were dealing with him, as well as  
18 clearing that vehicle; and then once the firearm was located,  
19 making that firearm safe and secure.

20 Q. Were there other people who would have been assigned or  
21 would have the responsibility if needed to take photographs?

22 A. There was.

23 Q. Who would that have been?

24 A. It would have been agents from the case squad or -- and/or  
25 the search team that was sent out to search the residence.

1 Q. So the search team would worry about photographs?

2 A. Correct.

3 Q. And you would not have?

4 A. Correct.

5 Q. All right. Why in that instance did you want a photograph  
6 to be taken of the firearm?

7 A. Because I had seen it in plain view and I didn't want  
8 anyone to move it before a photograph was taken.

9 Q. You were asked about clearing the interior of the car.  
10 Does it matter for today's purposes all the parts of the  
11 interior?

12 A. No.

13 Q. On that date did it matter about all the parts of the  
14 interior?

15 A. No.

16 Q. What was the most important thing about that date in your  
17 observation of the interior of the car?

18 A. That I saw that firearm underneath the seat.

19 Q. And that was pursuant to what?

20 A. Clearing the vehicle for occupants.

21 Q. Do you recall anything unusual about the interior of this  
22 vehicle?

23 A. No.

24 Q. Did it seem standard to you?

25 A. Pretty standard, yes.

1 Q. You were asked about whether Mr. Richards, the defendant,  
2 is left-handed or right-handed. Did that have any implication  
3 on that date when you found this firearm?

4 A. None.

5 Q. Does it have any implication today whether he's  
6 left-handed or right-handed about you finding this firearm?

7 A. Not at all.

8 Q. And observing that in plain view?

9 A. None.

10 Q. You were asked about the photograph, Government  
11 Exhibit No. 3, and any light that's shining on this. Do you  
12 use a flashlight?

13 A. Yes.

14 Q. And on that -- well, you just watched the video, correct?

15 A. Correct.

16 Q. At that time was it dark out?

17 A. It was.

18 Q. Was a flashlight necessary?

19 A. Yes.

20 Q. And did you employ a flashlight on that date?

21 A. Absolutely.

22 Q. For what purpose?

23 A. To have a look into the vehicle to see if there was any  
24 people in it.

25 Q. And consequently what did you find?



1 A. I saw a firearm.

2 Q. When you saw the firearm, where were you?

3 A. Somewhere in the vicinity of the open door as I was  
4 clearing across it.

5 Q. Were you in the vehicle?

6 A. No.

7 Q. Was any part of your body in the vehicle?

8 A. None.

9 Q. Now, you were asked a number of questions about DNA on the  
10 firearm. At any point in time regarding the investigation of  
11 Mr. Richards, was it your job to request a DNA analysis?

12 A. No. I was in no way involved in the investigation of  
13 Mr. Richards as far as collecting evidence and things like  
14 that go.

15 Q. Were you involved in any investigation of Mr. Richards  
16 prior to December 14th, 2018?

17 A. None.

18 Q. Have you been involved in any investigation of  
19 Mr. Richards subsequent to December 14th, 2018?

20 A. Other than preparing for this hearing as of last Friday,  
21 no.

22 Q. And that is since December 14th, 2018?

23 A. Correct.

24 Q. At the conclusion of turning over the firearm to an  
25 evidence tech of some kind, what did you do regarding this

1 case?

2 A. Went to Mr. Richards' residence and cleared that residence  
3 for safety reasons and provided security for the search team.

4 Q. All right. And after you completed that did you have any  
5 involvement regarding Mr. Richards?

6 A. None.

7 Q. Do you need to know about the DNA request of the firearm  
8 in this case?

9 A. From my perspective?

10 Q. Yes.

11 A. No.

12 Q. Does your -- do your managers or supervisors require that  
13 you know about the DNA request in this case?

14 A. Me, no.

15 Q. Do you have other cases you are involved in as part of  
16 that investigation?

17 A. As my own investigations?

18 Q. Yes.

19 A. Since that time, yes, I've had numerous.

20 **MR. CULLINANE:** One second, please. Your Honor,  
21 those are all my questions for Agent Schirching.

22 **MR. STACHOWSKI:** I have no questions, Your Honor.

23 **MAGISTRATE JUDGE ROEMER:** You can step down, Agent.  
24 Thank you very much.

25 **(WHEREUPON, the witness was excused).**

1                   **MAGISTRATE JUDGE ROEMER:** Mr. Cullinane, do you have  
2 any other witnesses?

3                   **MR. CULLINANE:** No, Your Honor. We are not calling  
4 any further witnesses today. Thank you.

5                   **MAGISTRATE JUDGE ROEMER:** Mr. Stachowski, any  
6 witnesses?

7                   **MR. STACHOWSKI:** No, Your Honor.

8                   **MAGISTRATE JUDGE ROEMER:** No witnesses?

9                   **MR. STACHOWSKI:** No witnesses.

10                  **MAGISTRATE JUDGE ROEMER:** Okay, now, Mr. Stachowski,  
11 beginning today you mentioned the need for some other hearing.  
12 What was that about?

13                  **MR. STACHOWSKI:** Yeah, the other hearing is -- if  
14 you look at -- oh, you don't have the photographs. I'm sorry.  
15 In the -- in the search warrant it describes looking for  
16 certain things.

17                  There are safes and -- many safes that were in this  
18 particular residence. These safes were opened and there's  
19 nothing in the search warrant that talks about the safes, and  
20 including a gun safe that was opened without a warrant for a  
21 gun safe.

22                  And so -- so it looks like there was -- there were  
23 things that were searched and seized that were outside of the  
24 scope of the warrant. So that's what I'm looking for.

25                  And -- and more critically, now I hear about some

1 people who may have been reliable informants, that were  
2 reliable about bomb making? You know, it -- it seems to me  
3 that I should at least have the ability to -- to see the  
4 search warrant application.

5           We have a protective order, I believe, in place. I  
6 won't share it with -- with my client, but I have to know what  
7 in the world that -- that they said that talks about bomb  
8 making because I -- I don't see anything that -- that connects  
9 him to making bombs other than finding something that they're  
10 calling a bomb in -- in this apartment.

11           And -- and what it is is some fireworks, but --  
12 but, you know, I'm -- I need to find out about the bomb making  
13 because there aren't bombs, plural, and it looks like it's  
14 some old thing. Even the fireworks look pretty old that are  
15 in the seizure.

16           So what I need to do in order to properly defend  
17 this, and -- and more importantly to properly determine  
18 whether the scope of the -- that warrant about bomb making  
19 materials, bombs, had probable cause is that I have to be able  
20 to see that application.

21           Mr. Cullinane said come see it at the  
22 U.S. Attorney's Office, but that doesn't allow me to sit down  
23 and look at it, do research and determine --

24           **MAGISTRATE JUDGE ROEMER:** So it has been offered for  
25 you to see? You just didn't want to go to the U.S. Attorney's

1 Office?

2           **MR. STACHOWSKI:** No, he was gonna bring it here and  
3 he didn't do it. It's very difficult for me to -- to go to  
4 the U.S. Attorney's Office.

5           **MAGISTRATE JUDGE ROEMER:** Okay.

6           **MR. CULLINANE:** Judge, if I might? This came up  
7 last time we were here before you and I sent, I believe, by  
8 e-mail the application --

9           **MR. STACHOWSKI:** You did?

10          **MR. CULLINANE:** -- to Mr. Stachowski. He's had the  
11 application.

12          **MR. STACHOWSKI:** I'll --

13          **MR. CULLINANE:** It's not in my possession -- well, I  
14 have possession of it. I also provided him a copy that he has  
15 at his disposal at any time.

16          **MR. STACHOWSKI:** Okay.

17          **MAGISTRATE JUDGE ROEMER:** Okay. And a protective  
18 order prevents him from disclosing it to the defendant?

19          **MR. STACHOWSKI:** Yes (inaudible).

20          **MR. CULLINANE:** And, in fact, I think I asked on the  
21 record, I said, Judge, can we make sure it's for attorney's  
22 eyes only and I think you said that's permissible, no problem,  
23 that's the way we went about it. He's had it.

24          **MR. STACHOWSKI:** Then maybe it's sitting there and I  
25 didn't (inaudible) --

1                   **MAGISTRATE JUDGE ROEMER:** Okay. What about the  
2 issue of the need for a hearing about --

3                   **MR. CULLINANE:** Right. Absolutely not. The  
4 information provided in the application for a search warrant  
5 was reliable. The Court reviewed it. The Court had an  
6 opportunity to review it. It described the information  
7 provided from multiple sources.

8                   **MAGISTRATE JUDGE ROEMER:** Okay. Well, specifically  
9 with regard to safes?

10                  **MR. CULLINANE:** Right. The information there talked  
11 about firearms and Mr. Richards' possession of these firearms.  
12 The firearms were found in gun safes.

13                  **MR. STACHOWSKI:** But, Your Honor, other materials  
14 were found in other safes because there's photographs of the  
15 safes open.

16                  **MAGISTRATE JUDGE ROEMER:** Well, I think this is a  
17 legal matter, not -- I don't see the need for an evidentiary  
18 hearing on it.

19                  **MR. CULLINANE:** I agree.

20                  **MAGISTRATE JUDGE ROEMER:** And many times the search  
21 warrant, I don't know in this case, I haven't gone back to  
22 review it, it talks about the ability to look in any  
23 containers in that and safes are considered containers that  
24 you can look into.

25                         But I haven't reviewed that issue, but I just don't

1 think there's a hearing needed on it, okay? So we'll put a  
2 briefing schedule in for the hearing on this matter and then  
3 we'll -- at the end we'll schedule an oral argument date and  
4 that will be for all the rest of the motions.

5 **MR. STACHOWSKI:** (Inaudible) and what I'll do then,  
6 Your Honor, is I will -- if I have some issue on scope of the  
7 warrant, I'll contain that in a separate --

8 **MAGISTRATE JUDGE ROEMER:** Sure, you can file  
9 whatever additional briefing you want.

10 **MR. STACHOWSKI:** -- so I don't confuse it  
11 in (inaudible) --

12 **MAGISTRATE JUDGE ROEMER:** Gotcha. Okay, so usually  
13 I give 30 days to get ahold of the transcript.

14 **MR. STACHOWSKI:** I could order it as soon as I get  
15 back.

16 **MAGISTRATE JUDGE ROEMER:** Okay.

17 **THE CLERK:** That will take us to February 27th.

18 **MAGISTRATE JUDGE ROEMER:** Mr. Stachowski, how long  
19 do you think -- we're gonna file simultaneous briefs.

20 **MR. STACHOWSKI:** Yeah, I need -- I'm gonna be gone  
21 the week after that, so I'll need at least maybe another four  
22 weeks from the 27th only because --

23 **MAGISTRATE JUDGE ROEMER:** How about we give you 30  
24 days from the 27th, okay?

25 **MR. STACHOWSKI:** That's fine.

1           **THE CLERK:** March 27th.

2           **MAGISTRATE JUDGE ROEMER:** And then two weeks to  
3 respond, again, simultaneous responses.

4           **THE CLERK:** April 10th.

5           **MAGISTRATE JUDGE ROEMER:** And an oral argument date.

6           **THE CLERK:** April 16th at 11 o'clock.

7           **MR. CULLINANE:** Thank you.

8           **MR. STACHOWSKI:** Thank you.

9           **MAGISTRATE JUDGE ROEMER:** Is that good with you,  
10 Mr. Stachowski?

11           **MR. STACHOWSKI:** That's fine, Your Honor.

12           **MAGISTRATE JUDGE ROEMER:** Okay. Anything else today  
13 then, Mr. Cullinane?

14           **MR. CULLINANE:** No. Thank you very much, Judge.

15           **MAGISTRATE JUDGE ROEMER:** Mr. Stachowski?

16           **MR. STACHOWSKI:** No, Your Honor.

17           **MAGISTRATE JUDGE ROEMER:** Have a great day.

18           **MR. CULLINANE:** You too, thank you.

19           (WHEREUPON, proceedings adjourned at 3:39 p.m.)

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**CERTIFICATE OF TRANSCRIBER**

In accordance with 28, U.S.C., 753(b), I certify that this is a true and correct record of proceedings from the official electronic sound recording of the proceedings in the United States District Court for the Western District of New York before the Honorable Michael J. Roemer on January 27th, 2020.

S/ Christi A. Macri

Christi A. Macri, FAPR-RMR-CRR  
Official Court Reporter